Supreme Court, U.S.
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Case No.

IN THE

Supreme Court Of the United States

CATHY D. BROOKS-McCOLLUM,
Petitioner(s)

v.

WAYNE BERRY, ET AL.,
Respondent(s)

Petition For Writ of Certiorari
To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Pursuant to Fed.R.Bankr.P.4007(b) should the Court Of Appeals have answered all of Petitioners questions raised in her March 2002 Complaint (timely appealed as affirmed by Court) regarding the dischargability of the Mortgage, as a result of the new argument Respondents raised in the Court Of Common Pleas that there is not a Mortgage, and the document on file is a Fraud?

2. Pursuant Fed.R.Bankr.P.4007(b) should the court have answered the dischargability on the Note and or Mortgage document regarding the assignment to Petitioner's minor daughter?

3. In order for Petitioner to proceed with foreclosure without fear of penalty after Respondents raised a new issue of fraud, should the Court have determined the validity of the Mortgage Document and Note Pursuant Fed.R.Bankr.P. 4007(b) and Fraud?

4. Were Petitioners rights being violated due to Respondents failure to follow Fed.R.Bankr.P.2002 and 2003?

5. Were Fed.R.Bankr.P4007(a).(b) and (c) violated since Petitioner never received notice of Creditors Meeting.

6. Petitioner filed a Proof Of Claim pursuant to Fed.R.Bankr.P3001, and no objection was lodged, should the Appeals Court have ruled on this and affirmed that there is a valid Mortgage? Was substantial Justice had per Fed.R.Civ.60?

7. Was the Court of Appeals correct in stating Petitioner having been informed of Foreclosure by her attorney that this was deemed timely notice to file for dischargeability, and that a Creditors Meeting was set. Also should Petitioner have known that Respondant would commit Fraud and claim the Mortgage to be invalid, although this claim was made after the Bankruptcy period?

8. Did the Court Of Appeals error by stating in their opinion that Petitioner did not file her Complaint pursuant 11 U.S.C.§523(a)(2) (A), when as part of Petitioner's Complaint she explicitly states this title and all sections arguing dischargability?

9. Did the Court Of Appeals error in stating by Petitioner filing a Withdrawal Of Leave for one pending item, that all items timely filed (excluding March 2002 Complaint) were also being asked to be withdrawn? Were letters and explanations also asking of dischargability of debt and should have been ruled on.

PARTIES TO PROCEEDING

Petitioner, Cathy D. Brooks-McCollum is an individual.

Respondent, defendant below, Larry Butler is an individual who purchased real estate from Respondent.

Respondent, defendant below, Debra Butler is an individual who purchased real estate from Respondent.

Respondents, defendant below, Wayne Berry is counsel for Respondents Larry and Debra Butler who failed to comply with all State and Federal Laws.

Respondent, defendant below, Zachary Perlick, is counsel for Respondents Larry and Debra Butler who failed to comply with all State and Federal Laws.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED.....i

PARTIES ii

TABLE OF CASES AND CITED AUTHORITIES vi

OPINIONS BELOW.....1

JURISDICTION 2

CONSTITUTIONAL PROVISIONS INVOLVED.....2

STATUTES INVOLVED.....2

STATEMENT OF CASE 3

REASONS FOR GRANTING WRIT 11

APPENDICIES

Opinion Of The Court Of Appeals For the Third Circuit
03-1512 Filed October 22, 2003 .....1a

Order Of The Court Of appeals For The Third Circuit
03-1512 dated 11/13/2003. .....9a

Judgement Of The United States Court Of Appeals For
The Third Circuit 03-1512 10/15/2003.....10a

Order Of The District Court For The Eastern District
02-MC-134 dates 01/29/03, filed 01/31/2003 addressing
Interlocutory appeal and appeal from final orders.....12a

Order Of The District Court For The Eastern District
02-MC-134 12/11/2002 .....14a

Order Of The District Court For The Eastern District
02-MC-134 8/09/2002 .....15a

TABLE OF CONTENTS-Continued

Order Of The Bankruptcy Court For The Eastern District Bankruptcy Number 00-31544DWS Adversary No. 02-0397 5/03/2002 .....17a

Order Of The Bankruptcy Court For The Eastern District on Petitioner Appeal Before A Jury Panel 00-31544DWS 3/01/2002 ..... 24a

Order Of The Bankruptcy Court For The Eastern District 00-31544DWS 2/25/2002 .....26a

Notice Of Appeal dated 5/08/02 of The Bankruptcy Court Order given on 5/03/02 For The Eastern District 00-31544DWS 27a

Designation dated 05/08/02 of the Bankruptcy Court Order given on 05/03/02 For the Eastern District 00-31544DWS.....28a

Leave To Appeal dated 05/06/02 of the Bankruptcy Court Order given on 05/06/02 For the Eastern District 00-31544(DWS).....29a

Complaint of Petitioner in The Bankruptcy Court For The Eastern District 00-31544DWS 03/07/2002.....30a

Leave To Appeal dated 03/05/02 in response to Order of Bankruptcy Court For The Eastern District 00-31544DWS dated 03/01/02.....42a

Affidavit by Respondents Agent confirm there is a valid Mortgage and that they performed these services dated 3/4/2002 .....44a

Notarized Document by Respondents Mortgage Company confirming there is a valid Mortgage dated 02/12/02 .....45a

Bench Memo Of The Bankruptcy Court For The Eastern District 00-31544DWS 3/27/2001 .....46a

Transcript Of The Bankruptcy Court For The Eastern District 00-31544DWS 03/27/2001 .....47a

Letter of Petitioner in The Bankruptcy Court For The Eastern District 00-31544DWS 01/25/01 .....56a

TABLE OF CONTENTS-Continued

Explanations of Petitioner in The Bankruptcy Court For The Eastern District 00-31544DWS 57a

Respondents Answer In Court Of Common Pleas Philadelphia County 2001, 972 .....58a

Respondents Memorandum Filed in the United States Bankruptcy Court For The Eastern District 00-31544, Adversary No. 02-397.....60a

MORTGAGE issued to Respondents dated August 14, 1998 .....61a

NOTE issued to Respondents dated August 14, 1998.....63a

TABLE OF CASES AND CITED AUTHORITIES

Page

STATUTES:

U.S.C.§523(a)(2), (1) (2)(A) i,3,7,11
28 U.S.C. §1254(1) 1

RULES:

Fed.R.Bankr.P.4007(a)(b)(c) i,3,5,7,11
Fed.R.Bankr.P.2002 ..... i,2
Fed.R.Bankr.P.2003 ..... i,2
Fed.R.Civ.P60 ..... i.8
Fed.R.Bankr.P.3001 3
Fed.R.Bankr.P.3002 3
Fed.R.Bankr.P.3003 3
Fed.R.Bankr.P.3005 3
Fed.R.Bankr.P.3007 3

AMENDMENTS

Fourteenth Amendment 11

Case No.

IN THE

Supreme Court Of the United States

CATHY D. BROOKS-McCOLLUM,
Petitioner(s)

v.

WAYNE BERRY, ET AL.,
Respondent(s)

Petition For Writ of Certiorari
To The United States Court Of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner, Cathy D. Brooks-McCollum, respectfully petitions that a writ of certiorari be granted to review the judgment of the United States Court Of Appeals For the Third Circuit.

OPINIONS BELOW

The Court Of Appeals submitted its opinion on October 15, 2003, and filed it on October 22, 2003 (reproduced in Appendix Page 1a (A timely Appeal was filed on issues of dischargability).

This Petition is directed to the March 7, 2002 Complaint timely appealed filed in the Bankruptcy Court, which was also asking that the Court determine the validity of Petitioner's Mortgage Document, and the Mortgage Note, in order to proceed with Foreclosure.

Respondents claim the Mortgage to be invalid and the Note to be discharged. Petitioner assigned this Mortgage and Note to Petitioner's minor daughter. Not withstanding the assignment of the Mortgage and Note the Mortgage document was filed and notarized by Respondents agent. The time to dispute said Mortgage is barred by Statutes of Limitations. Respondents never disputed this Mortgage with their agents and their Mortgage Company who agreed that it is valid.

The Court Of Appeals failed to answer the validity of the Mortgage document and or Note, which was referenced in Petitioners March 7, 2002 Complaint and timely appealed per the opinion of the Court Of Appeals.

The Court of Appeals state in it's Opinion that Petitioner was not asking for a determination pursuant US Title 18 §523, however the Complaint clearly states this.

STATEMENT OF JURISDICTION

The court of appeals entered its judgment on October 22, 2003. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The equal protection clause of the Fourteenth amendment to the United States Constitution provides in pertinent part:

> No state shall....deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. **Notice of Bankruptcy Proceedings as required by Fed.R.Bankr.P2002 raised in all courts**. Respondents did not inform Petitioner of any Bankruptcy Proceedings. Notice of the Bankruptcy proceedings were not given to Petitioner until some time after proceedings were filed and had begun. This notice was given to Petitioner at such time Respondents were sent notice that Foreclosure was to begin on their premises. At this time counsel for Petitioners then sent a copy of the Bankruptcy petition to Respondents foreclosure attorney who forwarded to Petitioner, and informed her that Foreclosure had to cease. Petitioner would argue that this is not sufficient notice of Bankruptcy and the proceedings that were to take place. Fed.R.Bankr.P 2002 state explicitly time periods in which parties are to be given notice of any proceedings. Had Foreclosure not began, Petitioner would not have known of any Foreclosure proceedings until at such time they were over. No notice was given to Petitioner regarding timing for filing objections to any pleadings even at the time Bankruptcy Petition was supplied.

B. **Notice of Creditors Meeting (raised in all courts) as required by Fed.R.Bankr.P 2003.** Petitioner was never given notice that a Creditors Meeting was being had, nor as to the time or place. The Appeals court erred in stating that mere knowledge of Bankruptcy should be notice of the Creditors Meeting being had, and the time for objections. At the time Petitioner found out about the Foreclosure proceedings there was not 20 days between the time of notice of Foreclosure and the time of the Creditors Meeting. Upon being informed of the Foreclosure the Creditors meeting had been set, and this notice was not supplied to Petitioner's foreclosure attorney. Therefore, even if Petitioner was informed of the proceedings at the time the Foreclosure notice was sent to Respondents, this was a clear violation of Fed.R.Bank.P 2003. Furthermore From October through January Petitioner was hospitalized in October, November and January for a series of operations, and made sure that she received mailings during this time, so that she could be informed of the Creditors Meeting, therefore to be able to inform the Courts that she was hospitalized and would like to be able to present information during this time period.

C. **Proof Of Claim Filed Pursuant to Fed.R.Bankr.P 3001-3003, 3005 and 3007.** Petitioner filed her Proof Of Claim perfecting her security interest in the property in which Respondents reside. Respondents and their counsel failed to object to the Proof of Claim Pursuant to Fed.R.Bankr.P3007 within the 30 day period allowed. Respondents stated they did not know of Proof Of Claim being filed. The court erred when they allowed this argument by Respondents and then claimed Petitioner should have known about all proceedings taking place, although not informed of any of the proceedings. (Raised In Each Court) In that Petitioner filed this Proof Of Claim each court should have answered Petitioner's questions regarding the dischargability of her debt held with Respondents.

D. **Complaints filed pursuant to Fed.R.Bankr.P 4007 asking for a determination of dischargability and Fraud.** The US Court of Appeals concluded that Petitioner did not and was not asking for a determination of dischargability. However, the Bankruptcy Court, acknowledges that Petitioner was asking for a dischargability of her debt in its' opinion. The Court of Appeals state in their October 22, 2003 opinion, page 8 that if Petitioner was asking for a determination of dischargability, she failed to state her objection to discharge pursuant to U.S.C.§523 (1) (2)(A), although in Petitioner's March 2002 Complaint (which was timely appealed as per the Court Of Appeals in their opinion), she stated Section 523 specifically, and is so referenced in each order made by the Bankruptcy Court. Based on the Opinions of all Courts it is clear that they knew the main concern of Petitioner was that of the dischargability of the Mortgage Debt and that Of the Note, so that she could proceed with foreclosure in order to perfect the security interest. Neither of the courts determined or answered if these items were discharged or if they were valid documents in order to allow Petitioner to proceed with Foreclosure.

In initial arguments made by Petitioner when filing her Objection To Discharge she was not allowed the opportunity to file any petitions, and her Letters, and Explanations filed, were not ruled on by the Bankruptcy Court, and still remain pending (These items should have been ruled upon in order for Petitioner to perfect an appeal). The US Court Of Appeals concluded that Petitioners Letters, and Explanations were not official Complaints. However,

each filing stated that this was a Complaint being lodged, at which time if a fee was required the court should have then asked for the fee, and a Complaint would have been lodged at this time stating the applicable laws. The letters and explanations all ask the court to supply Respondent with why she was not informed of hearing so that she can present this to the Court. This is clear that a Complaint is being lodged. This was not the main argument made by Petitioner, but one of the arguments, in addition to the question of dischargability.

E. **Courts assistance and Aiding of the Respondents in their Pleadings.** The US Court Of Appeals argue that Petitioner should have stated the laws in her first filings in Bankruptcy Court. However, in initial filings in the Bankruptcy Court, Respondents supplied no law or evidence to support their arguments or their defenses. All objections by Respondents in these initial pleadings were made by the Court, and the court sited and aided Respondents with their pleadings on case law. This is not substantial justice, and furthermore Respondents did not file any response to Petitioner's Objection to Discharge, Letters and Explanations. Therefore, since no objection was made the Complaints should have been lodged and allowed to proceed. The Court Transcript surrounding arguments made on the Objection To Discharge will show that there were no specific laws stated by Respondents, and no Opinion written by the Bankruptcy Court. There was no argument allowed surrounding the letters and explanations filed.

F. Bankruptcy Court allowed Respondents the opportunity to reopen Bankruptcy Case for pleadings pending in another court however refused to allow the determining of dischargability of the Mortgage document and or Note, which does not and require payment. After Petitioner argued her Objection to Discharge before the court and informed the court that Petitioner was also informed by Respondents via a letter that the Mortgage was also discharged, the court refused to rule on the Mortgage being discharged, but informed Petitioner that if the Mortgage is not a Mortgage as claimed by Respondents that Petitioner would be held accountable for executing on the Mortgage.

The claim made by Respondents during the Objection to Discharge Hearing was that the Mortgage document was not valid because of the time the document was filed by their agent. However,

Respondents agents filed the document, and did not supply the Mortgage document to Petitioner until after the filing of said document. After the Bankruptcy hearing surrounding the Objection to Discharge, Plaintiff then filed a claim in the Court Of Common Please to foreclose. Respondents then changed their claim in the pleadings being held in the Court Of Common Pleas. When Respondents became aware that arguing that a Mortgage Document of which they and their agents failed to provide to Petitioner or file would not be valid, pursuant Pennsylvania laws, they then claimed the document to be a fraudulent document in their filings. Petitioner then filed a Complaint of Fraud in this Court, based on the Fraud Respondents were not committing. Once the claim of Fraud was filed and combined with the Foreclosure case, Respondents went back to the Bankruptcy Court to ask this court to open the case to hear part of the issues pending in the Court Of Common Pleas. It was at this time Petitioner then filed her March, 2002 Complaint which was also asking for a determinability of discharge and if the new incident of Fraud was a violation; since the Bankruptcy Court would not hear any arguments made by Petitioner regarding the dischargability of the Mortgage. The new argument surrounding the determinability of discharge could not have been argued during the Bankruptcy period, nor during the Objection to Discharge, since Respondents did not make this new claim, until the filing of the Foreclosure on their property as part of their filings. The issue of the Mortgage not being valid was never raised in the Bankruptcy Court during prior proceedings, and was not know to Petitioner or the Court that such an issue existed.

The Bankruptcy Court concluded that the issue of the dischargability of the Mortgage and or Note was not within this courts jurisdiction, although the **Fed.R.Bankr.P 4007** allows this court to rule on such issue of dischargability. Even if it were not within the jurisdiction of the Bankruptcy Court, the District Court and Court of Appeals should have ruled upon the dischargability and not dismissed the Complaint in whole.

After the Objection to Discharge hearing the Petitioner filed a Foreclosure case in the Court Of Common Pleas. After filing the Foreclosure Complaint Respondents and their counsel filed a response now stating that the Mortgage was a Fraud (not argued in the Bankruptcy Court at any time). Respondents now raised a new

claim stating that they never agreed to a Mortgage and that they did not sign the Mortgage document. After this claim Petitioner then filed a fraud claim in the same court, based on Respondents fraudulently stating that they never agreed to a Mortgage and did not sign the Mortgage.

Respondents then filed with the Bankruptcy Court their reply to the Fraud claim, of which they committed in another court (separate from the fraud they initially committed in the Bankruptcy Court), instead of replying in the Court Of Common Pleas. The Foreclosure case and the Fraud case were combined in the Court Of Common Pleas, with no objection by Respondents. The Bankruptcy Court allowed Respondents to file their response in its court and re-opened the Bankruptcy case to allow for charges against Petitioner. This case is still pending.

After the Bankruptcy Court allowed the Bankruptcy case to be re-opened Petitioner then filed her Complaint in the Bankruptcy Court based on the new issues raised in the Court Of Common Pleas by Respondents surrounding the dischargability of the Mortgage document and Note. Although the complaint raised old issues in order to show a pattern by Respondents, it also raised the new issues raised of the Mortgage Document being a Fraud by Respondents. At this time Petitioner asked that the Bankruptcy Court to determine the dischargability of the Mortgage document and the Note, first on the basis determining if Respondents claims are valid that they did not sign or agree to the Mortgage. The other issue of dischargability raised in pleadings was if any of the documents are discharged in that both documents, which were assigned to Petitioner's, minor daughter. In that Petitioner did not know of this fictitious argument now being made by Respondents and it was not raised until after the foreclosure proceedings, it could not have been presented at any time during the initial Bankruptcy period.

None of the three courts answered the question of dischargability on the Mortgage document, but states that they will hold Petitioner responsible for documents drafted at the hands of Respondents agents should she proceed with Foreclosure. All courts state that a Mortgage is not discharged, however they have not addressed the question whether or not the Mortgage is valid or invalid (discharged or not). If the new claim raised by Respondents is deemed valid after foreclosure or during foreclosure, Petitioner

could face fines. Therefore, the question of dischargability surrounding the Mortgage was not if a Mortgage is discharged (Respondent knew the answer to this), but if there is a Mortgage and is the document labeled Mortgage signed by Respondents and their agents and filed by Respondents agent a valid document to execute on Foreclosure. Answering this is the only way Petitioner would receive substantial justice.

Appendix P and Q, highlighted sections supports that Respondents have continually changed their claim and statements in once filings were made in the Court Of Common Pleas. Petitioner asks that this court order that a determination be made on the validity of the Mortgage and what the intentions of Petitioner and Respondents were when the documents were drafted, based on the supporting evidence hereto attached and the filing of the Proof Of Claim, which went unopposed. Respondents did not supply and supporting evidence to the contrary that a Mortgage was executed and is or not valid. Petitioner not only supplied the Mortgage, Note, HUD 1 form, Affidavits by Respondents agents, but also supplied cancelled checks to the courts below showing that Respondents was aware that they had a Mortgage.

G. **Filing Of Proof Of Claim During Bankruptcy Period.** Petitioner timely filed her Proof Of Claim during the Bankruptcy Period and based on this Respondents should not be able to continue to change claims regarding the Mortgage document of which they never filed a question of dischargability during the Bankruptcy Period, pursuant Fed.R.Bankr. P4007(b). In each instance in each court Respondents continue to raise new claims. (Raised In All Courts). Respondent's state in their pleadings filed in the Bankruptcy Court that it was an error listing their claim on the incorrect schedule, not that there was no Mortgage. Respondent's state on each check of payment made to Petitioner that they were paying their second mortgage. Respondents never submitted any objection in any court, other than the Court Of Common Pleas as to the validity of the Mortgage document.

H. Petitioner Complaint and Basis of Filing. Although, Petitioner raised old issues in her March 2002 Complaint, in order to show a pattern, Petitioner was merely asking each court to determine the dischargability and Fraud of the new issues raised, and that

Respondents were continuing to commit further Fraud after the initial Fraud claim raised during her Objection To Discharge. Petitioner argued the other rulings because of the allowing of the case to be opened by the Bankruptcy Court surrounding the Fraud claim made in the Court Of Common Pleas, regarding the signing of verification to false issues presented in this court. (where Respondents confirm they were aware why Petitioner was arguing fraud, based on the filing of the false verification) Petitioner was merely asking that the courts determine if the Mortgage document and Note are discharged and is a valid document pursuant Fed.R.Bankr.P4007(b) and U.S.C.§523. The District Court and Court of Appeals confirms that Petitioner's Complaint filed in March of 2002 was timely appealed and this clearly is asking for a determinability of Fraud.

I. Petitioner Objection To The Court Ordering her first Appeals Untimely. The U.S. Court Of Appeals concluded that the only timely Appeal was that of the March 2002 Complaint and Respondents Motion To Dismiss. However, Petitioner would argue that all other Notices Of Appeal were timely filed. The court stated that since Petitioner filed a Withdrawal of Appeal on March 8, 2002, which stated pending proceedings, they deemed this a withdrawal of all pleadings. It was never Petitioner's intention to withdraw any of the other items from being appealed. The Withdrawal states pending complaints, and was not labeled with a docket number, so that this would not be mis-interpreted. The only Complaint the Court determined was not being asked to be withdrawn was that of the March 2002 Complaint, since the complaint was filed at the same time of the withdrawal of the other pending proceedings.

J. Initial Argument and Fraud Committed By Respondents. Furthermore, the Complaint also was challenging the Bankruptcy Order in each court pursuant Fed.R.Civil.P.60, in her Complaint, due to the many violations that occurred in supplying Petitioner with notice of proceedings. The Complaint was also challenging an issue never addressed by the Bankruptcy Court, regarding Explanations and Letters filed by Petitioner, of which were Complaints. If they were not proper complaints a ruling should have been made on this, but was not, and the US Court Of Appeals concluded that it was all right for the Bankruptcy Court not to rule on these filings.

K. Courts Conclusion surrounding the law. What each court has stated is that Petitioner should have known of the rules that needed to be followed surrounding notification of Bankruptcy Proceedings, although they were not supplied to the Petition outlining Bankruptcy. However, the courts have then concluded that Respondents do not have to follow the same laws governing Bankruptcy, in objecting to claims, which were timely filed during the Bankruptcy proceedings, such as the Proof Of Claim, perfecting a security interest. What the courts are saying and have allowed to continue is for Respondents to continue to change arguments surrounding the validity of a documents filed prior to the closing of the Bankruptcy showing there was a security interest, and have curtailed Petitioner from foreclosing on her security interest, because of all these new claims made by Respondents, and the Courts refusal to rule on the dischargability addressed in Petitioners Complaint. Petitioner cannot receive substantial justice for herself and her minor daughter if the courts do not rule on the dischargability of the Mortgage document and Note. Petitioner cannot further receive substantial justice if a court allows the Bankruptcy Court to hear any issues pending in another court, without entertaining all issues. The Bankruptcy Court cannot conclude what Petitioner's intentions were and are in having filed a Fraud case surrounding new Fraud made by Respondents in another Court. Petitioner at know time was asking the Court Of Common Pleas to rule on the Fraud committed in the Bankruptcy Court, however Petitioner is allowed to show that there is a pattern by all Respondents.

L. Bankruptcy Transcripts, outlining Respondents initial argument surrounding Mortgage and Courts Conclusion, highlighted and underlined in Appendix K. The Bankruptcy Transcript will outline that Respondents never argued Mortgage to be fraudulent, but that the Mortgage was barred by statutes. After the filing in the Court Of Common Pleas, when Respondents realized that Pennsylvania law also states that a Mortgage must be supplied in order to be filed, and all Respondents failure to supply Petitioner with Mortgage would not and did not bar said Mortgage, they all changed their claim to the Mortgage being a fraud. Once this claim was made in the Court of Common Pleas, **Petitioner then filed her 3/07/2002 Complaint in the Bankruptcy Court, Appendix L, asking the court to determine the dischargability of said Mortgage. All Courts refused to determine the validity of**

the Mortgage, although the appeal was timely filed for this Complaint. The disallowance of this argument is not substantial justice for Petitioner to proceed with Foreclosure, in fear of violating Bankruptcy laws. Therefore, this question should have been ruled upon in District court, in that the Bankruptcy Court stated it lacked jurisdiction to answer the questions raised.

REASON FOR GRANTING WRIT

This case was filed pursuant Fed.R.Bank.P4007 and U.S.C. §523 asking each court for a determination of dischargability and Fraud of which all courts failed to answer or determine. The U.S. Court of appeals concluded that Petitioner did not and was not asking for a determination of dischargability, and this conflict with the Bankruptcy Courts opinion, which acknowledges that Petitioner was asking for a determination of dischargability of the debt. The court of appeals state in their October 22, 2003 opinion, page 8 that Petitioner failed to state her objection to discharge pursuant U.S.C. §523(1)(2)(a), although Petitioner stated in her March 2002 timely appealed Complaint that she was filing this Complaint pursuant U.S.C. §523 and the Bankruptcy court acknowledges in their opinions denying petitioners complaint that petitioner was filing this complaint pursuant U.S.C. §523. Furthermore, neither court felt that the violations of the mentioned Federal Bankruptcy laws raised in Petitioners Complaint was a violation of petitioners rights pursuant the Federal Bankruptcy rules and the fourteenth amendment of the equal protection law.

Petitioner's Complaint filed and timely appealed raised old issues as well as new issues, but each court only addressed the old issues in determining the dischargability of the debt. In that Fed.R.4007 allow for a Determination of Dischargability to be filed at any time all courts denied Plaintiff substantial justice.

Furthermore, it was not in the Bankruptcy's courts jurisdiction to discharge a debt, that was assigned to Petitioner's minor daughter to be used for future college. Neither court addressed the issue that the debt in question was transferred to Plaintiffs minor daughter, and that Plaintiff is and was acting on behalf of her minor daughter.

CONCLUSION

Petitioner respectfully ask this court to 1) hold that Petitioner cannot be held for accountable for the very same laws where the

court has exempted Respondent from being accountable surrounding notification of Bankruptcy proceedings 2) reverse the decision of the court of appeals in that they failed to rule on the determination of the validity of the Mortgage, outlined in Petitioner's timely filed appeal 3) vacate the remainder of the court of appeals' decisions in that arguments were necessary to be presented in order to resolve the main questions presented of dischargability 4)determine if the new argument raised by Respondents that the Mortgage Document and Note are not valid have any foundation, and if Petitioner was asking for a determination of dischargability by filing the March 2002 Complaint, in that this was specifically listed in the Complaint, and the laws stated in the Court Of Appeals were also cited within this Complaint 4) determine if Respondents committed Fraud in the Court Of Common Pleas, by stating they have no Mortgage, nor ever agreed to a Mortgage, and then by coming back into the Bankruptcy Court making the same arguments in their responsive pleadings to the Complaint 5)remand the issue of determination of dischargability and all other issues the courts deem need be re-visited for further proceedings.

Respectfully submitted,

Cathy D. Brooks-McCollum
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Appendix To Writ of Certiorari
To The United States Court Of Appeals For The Third Circuit

APPENDIX

Cathy D. Brooks-McCollum (Pro Se)
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UNREPORTED- NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1512

CATHY D. BROOKS-MCCOLLUM,
Appellant

v.

WAYNE BERRY; ZACHARY PERLICK; LARRY BUTLER;
DEBRA BUTLER; BERRY & PERLICK

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 02-mc-00134)
District Judge: Honorable Stewart Dalzell

Submitted Under Third Circuit LAR 34.1(a)
OCTOBER 15, 2003

Before: BARRY, AMBRO AND SMITH, Circuit Judges.
(Filed: October 22, 2003)
OPINION

Appellees Larry and Debra Butler filed a voluntary petition for relief pursuant to Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Pennsylvania on September 14, 2000. The Bankruptcy Court docketed the case as Bankruptcy No. 00-31544. On January 2, 2001, the Butlers received a discharge in bankruptcy and the case was closed. Appellant Cathy D. Brooks-McCollum filed an objection to the discharge on March 5, 2001. In her objection, Brooks-McCollum claimed that the Butlers fraudulently obtained the discharge in bankruptcy by listing her on their bankruptcy schedules as an unsecured creditor even though they knew that she held a mortgage lien against their real property located at 6135 Cobbs Creek Parkway in Philadelphia, Pennsylvania. At the March 27, 2001 hearing regarding the objection, the Butlers claimed that the mortgage was not valid. At the conclusion of the March 27, 2001 hearing, the Bankruptcy Court denied the objection as untimely. Brooks-McCollum did not appeal. Instead, she filed a complaint in mortgage foreclosure and a separate complaint alleging fraud in the Philadelphia Court of Common Pleas. The cases have been consolidated and stayed.[1]

After Brooks-McCollum filed the foreclosure and fraud complaints, the Butlers filed a motion to reopen the bankruptcy case in order to pursue contempt remedies against Brooks-McCollum for violation of the discharge injunction. The Butlers asserted that Brooks-McCollum was doing more than trying to enforce her lien. By order entered

February 25, 2002, the Bankruptcy Court granted the motion. In response, Brooks-McCollum filed a motion for appeal by a jury panel. The motion was denied by order entered March 1, 2002. On March 6, 2002, Brooks-McCollum filed a motion for leave to appeal. Two days later, on March 8, 2002, she filed a withdrawal of the notice of appeal. On the same day, she filed an adversary complaint against the Butlers and their attorneys, which the Bankruptcy Court docketed as Adversary No. 02-00397. The defendants filed a motion to dismiss. On April 25, 2002, the Butlers filed an adversary complaint against Brooks-McCollum, which was docketed as

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[1] Brooks-McCollum claimed that she sought to have the state court proceedings stayed in order to bring criminal charges against the Butlers and their attorneys.

Adversary No. 02-00582. The Bankruptcy Court granted the defendants' motion to dismiss Brooks-McCollum's adversary complaint on May 3, 2002.[2] The Butlers' adversary complaint is still pending in the Bankruptcy Court.

On May 10, 2002, Brooks-McCollum filed a notice of appeal to the United States District Court for the Eastern District of Pennsylvania from the orders entered in the underlying bankruptcy case and her related adversary proceeding docketed as Adversary No. 02-00397.[3] On May 20, 2002, Brooks-McCollum filed a motion for leave to appeal all "interlocutory orders" entered in the bankruptcy proceedings. The District Court granted the motion on December 11, 2002 as unopposed. The Butlers and their attorneys filed a motion to dismiss. The District Court entered two separate orders on January 31, 2003; one order addressed Brooks-McCollum's appeal from "interlocutory orders" of the Bankruptcy Court and the other order addressed her appeal from final orders. In its order addressing "interlocutory orders," the District Court affirmed the March 27, 2001 order denying Brooks-McCollum's objection to the discharge in bankruptcy entered in Bankruptcy No.

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[2] The Court recognizes that one issue has survived this bankruptcy case, i.e.' whether the mortgage lien [Brooks-McCollum] alleges to hold against the Debtors' real property is valid. Since only debts are discharged in bankruptcy, the lien, if valid, would survive as an encumbrance against the debtors' real property and an in rem action is permitted. ... I directed her to the state court for an adjudication of her lien right as this Court no longer had jurisdiction over the bankruptcy case, which was closed. One year later, the Debtors filed a motion to reopen the bankruptcy case contending that McCollum was doing more than enforcing her lien and seeking to file an adversary proceeding for violation of the discharge injunction. The motion was granted, and the case was reopened for that limited purpose."

Put more simply by the Bankruptcy Court at a hearing: "Bankruptcy discharges debtors ... [I]t does not discharge liens. If you have a valid mortgage, this bankruptcy hasn't affected it. Thus not before us is the validity of Brooks-McCollum's purported mortgage lien."

[3] 'We agree with the District Court that Adversary No. 02-00582, the complaint filed by the Butlers against Brooks-McCollum, was not implicated in the appeal. The District Court has jurisdiction to hear appeals from final orders of the bankruptcy court and, with leave of the court, interlocutory orders as well. See 28 U.S.C. § 158(a). No orders had been entered in the Butlers' adversary proceeding and thus no appeal could be taken.

00-31544.[4] In the second order, the District Court granted the motion to dismiss with regard to the other orders entered in Bankruptcy No. 00-31544, denied the motion to dismiss as to the May 3, 2002 order dismissing Brooks-McCollum's adversary complaint, and affirmed the May 3, 2002 order. The District Court denied Brooks-McCollum's subsequent motion to correct the orders. Brooks-McCollum appeals.[5] Appellees have filed a motion to dismiss for lack of jurisdiction and for failure to comply with the Federal Rules of Appellate Procedure.

In their motion to dismiss, appellees assert that this Court lacks jurisdiction over the appeal of any orders entered in Bankruptcy No. 00-31544 because Brooks-McCollum did not timely appeal to the District Court from the orders entered in that case. We agree. Bankruptcy Rule 8002(a) states that "[t]he notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from." Bankr. R. 8002(a). The ten-day deadline is jurisdictional and strictly construed. See In re Universal Minerals, Inc., 755 F.2d 309, 311-12 (3d Cir. 1985). The last order entered in Bankruptcy No. 00-31544 was the March 1, 2002 order denying Brooks-McCollum's motion for appeal by a jury panel. Brooks-McCollum did not file a notice of appeal until approximately two months later on May 10, 2002. Moreover, she did not seek to extend the time to file a notice of appeal pursuant to Bankruptcy Rule 8002(c) or file any motions, which would have tolled the time to appeal under Bankruptcy Rule 8002(b). Consequently, Brooks-McCollum's appeal to the District Court from

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[4] The District Court doubted that the March 27, 2001 order was interlocutory. We agree and determine that the order was final. See generally In re Meyertech, 831 F.2d 410, 414 (3d Cir. 1987) (discussing factors to consider in determining the finality of a bankruptcy court order). In addition, it appears that the District Court intended to dismiss the appeal from the March 27, 2001 order for lack of jurisdiction, as the District Court clearly had concluded that the appeal was untimely.

[5] Brooks-McCollum filed her notice of appeal several days before the District Court entered an order denying her motion to correct the January 31, 2003 orders. She did not file an amended notice of appeal or a new notice of appeal seeking to appeal the order denying her motion to correct. See Fed. R. App. P. 4(a)(4)(B)(ii). Thus, this Court's jurisdiction is limited to the underlying District Court orders disposing of her appeal from the orders entered in the Bankruptcy Court.

the orders entered in Bankruptcy No. 00-31544 was untimely. We thus lack jurisdiction over the March 27, 2001 Bankruptcy Court order denying Brooks-McCollum's objection to the discharge in bankruptcy, the February 25, 2002 order granting the Butlers' motion to re-open the bankruptcy case, and the March 1, 2002 order denying Brooks-McCollum's motion to appeal by a jury panel. See Shareholders v. Sound Radio, Inc., 109 F.3d 873, 878-79 (3d Cir. 1997) (concluding that this Court lacked jurisdiction over a bankruptcy court order which was not timely appealed to the district court).

Brooks-McCollum did, however, timely appeal to the District Court from the May 3, 2002 order granting the defendants' motion to dismiss her adversary complaint. We exercise plenary review over the District Court's determinations and over the Bankruptcy Court's conclusions of law. See Shareholders, 109 F.3d at 878.

In her adversary complaint, Brooks-McCollum alleged that the Butlers violated numerous state and federal laws and that the Butlers' attorneys violated the Rules of Professional Conduct. Specifically, she alleged that the Butlers engaged in criminal and fraudulent conduct by failing to properly execute the second mortgage she purports to hold on the Butlers' property and by listing her as an unsecured creditor on their bankruptcy schedules. Brooks-McCollum further claimed that the attorney appellees continued the crime and fraud by, inter alia, advising the Butlers to file for bankruptcy and list her as an unsecured creditor.

After careful review of the record, we agree with the thorough opinion of the Bankruptcy Court that the statutory violations set forth in Brooks-McCollum's adversary complaint were either (1) clearly inapplicable to the factual grounds alleged in the complaint; (2) beyond the jurisdictional grant of the court; or (3) impermissible attacks on the final order of discharge. The federal criminal statutes cited by Brooks-McCollum did not provide for a private right of action and were thus not enforceable in the Bankruptcy Court. Cf. Cort v. Ash, 422 U.S. 66, 78-80 (1975) (a plaintiff cannot recover civil damages for an alleged violation of a criminal statute unless Congress intended to provide a civil remedy). The Pennsylvania criminal statutes likewise did not provide for a private right of action and were not enforceable in the Bankruptcy Court. Cf. D'Errico v. DeFazio, 763 A.2d 424, 430 (Pa. Super. Ct.

2000) (plaintiff cannot seek to impose civil liability based solely on a Pennsylvania criminal statute). Insofar as Brooks-McCollum alleged that the Butlers' attorneys violated the Pennsylvania Rules of Professional Conduct, the Bankruptcy Court correctly determined that violations of the Rules of Professional Conduct did not give rise to a private cause of action. See Pa. Rules of Professional Conduct, § 81.2 ("Violation of a Rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached."). Brooks-McCollum also referenced 42 Pa. Cons. Stat. Ann. § 8141, a lien priority statute, which was inapplicable to the facts of her case given that there was no lien priority dispute. Her reliance on Article 9 of the Uniform Commercial Code was also misplaced because her case did not involve an Article 9 secured transaction.

Additionally, the Bankruptcy Court correctly determined that Brooks-McCollum could not rely on 11 U.S.C. § 362, 11 U.S.C. § 523, or 11 U.S.C. § 727 to object, via the adversary complaint, to the Butlers' discharge. Section 362 of the Bankruptcy Code provides for an automatic stay of all collection actions against the debtor and the debtor's property once a bankruptcy petition is filed. See 11 U.S.C. § 362(a). The automatic stay in the Butlers' bankruptcy proceedings terminated when the Butlers were granted a discharge. See 11 U.S.C. § 362(c)(2)(C) (a stay in a Chapter 7 case terminates when a discharge is granted). Section 362 thus did not provide Brooks-McCollum with a basis for relief. Likewise, section 727 did not afford her any basis for relief. To obtain relief under section 727, a claimant must allege that the entire discharge would not have been granted but for the debtor's fraud. See In re Edmonds, 924 F.2d 176, 180 (9th Cir. 1991). Brooks-McCollum did not make such a claim. Rather, she claimed that the Butlers' fraud rendered the specific debt that they owed her nondischargeable in bankruptcy. Accordingly, she should have filed a dischargeability complaint pursuant to section 523(a)(2)(A) of the Bankruptcy Code, which provides that a particular debt obtained by fraud is exempted from discharge. See id.; 11 U.S.C. § 523(a)(2)(A). She did not file a dischargeability complaint pursuant to section 523(a)(2)(A) and therefore could not rely on that section of the Bankruptcy Code to challenge the dischargeability of her debt.

To the extent that Brooks-McCollum claimed that she failed to file a timely dischargeability complaint because she did not receive adequate notice of the bankruptcy proceedings, the claim lacked merit. The deadline for filing a dischargeability complaint in a Chapter 7 bankruptcy case is sixty days after the first date set for the meeting of creditors. See Bankr. R. 4007(c). Brooks-McCollum asserted that she did not receive notice of the meeting, which was held on October 18, 2000. She nonetheless had actual notice that the Butlers had filed for bankruptcy. In her "Leave to Appeal with Statements and Issues to be Presented," Brooks-McCollum explained that her attorney in a state action, which predated the bankruptcy filing, received notice of the filing and, in turn, informed her. Because Brooks-McCollum had actual notice of the bankruptcy filing, she could have filed a timely dischargeability complaint. See, e.g., In re Williamson, 15 F.3d 1037, 1039 (11th Cir. 1994); In re Green, 876 F.2d 854, 856 (10th Cir. 1989); and Neeley v. Murchison, 815 F.2d 345, 347 (5th Cir. 1987).

The Bankruptcy Court also correctly determined that Federal Rule of Civil Procedure 60 did not provide a basis for Brooks-McCollum to challenge, via her adversary complaint, the January 2, 2001 discharge order or the March 27, 2001 order denying her objection to the discharge. Federal Rule of Civil Procedure 60 is made applicable to bankruptcy cases by Bankruptcy Rule 9024. See Bankr. R. 9024. Brooks-McCollum failed to timely appeal either order. Instead, she challenged both orders in her adversary complaint and cited Rule 60 as the basis for doing so. This she could not do. A Rule 60 motion may not be used as a substitute for appeal. See Smith v. Evans, 853 F.2d 155, 158 (3d Cir. 1988).

Brooks-McCollum also claimed that her January 25, 2001 and February 19, 2001 letters to the Bankruptcy Court should have been treated as complaints. Her claim lacks merit. Her letters, even if construed as dischargeability complaints pursuant to section 523(a)(2)(A) of the Bankruptcy Code, would have been denied as untimely because, as discussed above, they were not mailed to the Bankruptcy Court within sixty days of the October 18, 2000 meeting of the creditors. See Bankr. R. 4007(c). If construed as adversary complaints, the letters would likewise be untimely. Adversary complaints are to be filed in a pending bankruptcy proceeding. See Bankr. R. 7003 ("[A] complaint commencing an adversary

proceeding [is to] be filed with the court in which the case under the Code is pending . . . ."). Brooks-McCollum did not mail her letters to the Bankruptcy Court until after the underlying bankruptcy case had been closed. Moreover, the letters did not meet the pleading requirements of Federal Rule of Civil Procedure 8(a)(2) which applies to adversary proceedings pursuant to Bankruptcy Rule 7008. See Fed. R. Civ. P. 8(a)(2); Bankr. R. 7008. Her letters thus could not have been treated as either dischargeability or adversary complaints.

We have fully considered Brooks-McCollum's other arguments raised on appeal and find that they lack merit and warrant no further discussion.

We will grant Appellees' motion to dismiss for lack of jurisdiction with regard to the orders entered in Bankruptcy No. 00-31544. Given Brooks-McCollum's pro se status, we will deny Appellees' motion to dismiss for failure to comply with the Federal Rules of Appellate Procedure. In all other respects, the orders of the District Court are affirmed.

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 03-1512

CATHY D. BROOKS-MCCOLLUM,

Appellant

v.

WAYNE BERRY; ZACHARY PERLICK; LARRY BUTLER; DEBRA BUTLER; BERRY & PERLICK

On Appeal From the United States District Court

For the Eastern District of Pennsylvania

(D.C. Civ. No. 02-mc-00134)

District Judge: Honorable Stewart Dalzell

Present: BARRY, AMBRO, and SMITH, Circuit Judges

SUR PETITION FOR PANEL REHEARING

The petition for rehearing filed by Appellant having been submitted to the judges who participated in the decision of this Court, and no judge who concurred in this decision having asked for rehearing, the petition for rehearing is DENIED.

BY THE COURT:

/s/ Maryanne Trump Barry

Circuit Judge

DATED: November 13, 2003

Tyw/cc: Cathy D. Brooks-McCollum

Wayne C. Berry, Esq.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1512

CATHY D. BROOKS-MCCOLLUM,
Appellant

v.

WAYNE BERRY; ZACHARY PERLICK; LARRY BUTLER;
DEBRA BUTLER; BERRY & PERLICK

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 02-mc-00134)
District Judge: Honorable Stewart Dalzell

Submitted Under Third Circuit LAR 34.1(a)
OCTOBER 15, 2003

Before: BARRY, AMBRO AND SMITH, Circuit Judges.

JUDGMENT

This case came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania. On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgments of the District Court entered January 31, 2003 be, and the same are, hereby affirmed. Costs taxed against appellant.

All of the above in accordance with the Opinion of this Court.

ATEST:

/s/Kathleen Brower
Acting Clerk

DATED: October 22, 2003

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CATHY D. BROOKS-MCCOLLUM CIVIL ACTION

v.

WAYNE BERRY et al. NO. 02-MC-134

ORDER

AND NOW, this 29th day of January, 2003, upon consideration of Cathy Brooks-McCollum's appeal of interlocutory orders, and the Court finding that:

(a) On August 9, 2002, we ordered Brooks-McCollum to file a specific list of orders she sought leave to appeal as well as copies of those orders, and on December 11, 2002 we granted her motion for leave to appeal;

(b) In compliance with our Order of August 9, 2002, Brooks-McCollum identified and provided copies of two bankruptcy court orders: Judge Diane W. Sigmund's bench order of March 27, 2001 denying Brooks-McCollum's objection to the order of discharge in In re Larry Butler and Debra Butler, No. 00-31544DWS (Bankr. E.D. Pa.), and Judge Sigmund's order of dismissal in Brooks-McCollum v. Berry, Adversary No. 02-00397 (Bankr. E.D. Pa. May 3, 2002);

(c) Our Order today in Brooks-McCollum v. Berry, Miscellaneous Action No. 02-134, disposes of Brooks-McCollum's appeal of Judge Sigmund's May 3, 2002 order of dismissal, and we therefore confine our review to Judge Sigmund's bench order of March 27, 2001;

(d) A party seeking to appeal a bankruptcy judge's interlocutory order must, inter alia, file a notice of appeal within ten days, see Fed. R. Bankr. P. 8001(b) (incorporating Fed. R. Bankr. P. 8001(a) and 8002(a));

(e) Even if we could construe Judge Sigmund's order of March 27, 2001 as interlocutory (a proposition we strongly doubt), it would be time-barred because Brooks-McCollum did not file her notice of appeal until May 10, 2002;

It is hereby ORDERED that:

1. Judge Sigmund's bench order of March 27, 2001 denying Brooks-McCollum's objection to the order of discharge in In re Larry Butler and Debra Butler, No. 00-31544DWS (Bankr. E.D. Pa.) is AFFIRMED; and

2. The Clerk of Court shall CLOSE this case statistically.[1]

BY THE COURT:

/s/ Stewart Dalzell J.

[1] This Order addresses only Brooks-McCollum's appeal of the bankruptcy court's interlocutory orders. Our other Order entered today disposes of Brooks-McCollum's appeal of final orders.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CATHY D. BROOKS-MCCOLLUM — MISCELLANEOUS ACTION

v.

WAYNE BERRY et al. — NO. 02-MC-134

ORDER

AND NOW, this 11th day of December, 2002, upon consideration of Brooks-McCollum's unopposed pro se "appeal of all recorded orders & pending orders in bankruptcy action 00-31544DWS & determinability of fraud" (docket entry # 1), which we have construed as a motion for leave to appeal, see Order of August 9, 2002, and the Court finding that:

(a) On August 9, 2002, we ordered Brooks-McCollum to file a specific list of orders she seeks leave to appeal as well as copies of those orders;

(b) Brooks-McCollum complied with our Order by identifying the orders she wishes to appeal and, pursuant to Fed. R. Bankr. P. 8003(a), she also filed two memoranda outlining the facts of the case and some fifty-one questions to be considered on appeal;

(c) Defendants have not responded to the motion for leave to appeal;

It is hereby ORDERED that plaintiff's motion for leave to appeal is GRANTED.[1]

BY THE COURT:

/s/ Stewart Dalzell,

[1] If Brooks-McCollum chooses to file her appeal pro se, she must familiarize herself with the relevant rules of procedure as well as the standards of review that will govern our disposition of the appeal. See, e.g., In re Trans World Airlines, Inc., 145 F.3d 124, 130-31 (3d Cir. 1998) (outlining standard of review).

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

CATHY D. BROOKS-MCCOLLUM MISCELLANEOUS ACTION

v.

WAYNE BERRY et al. NO. 02-MC-134

AND NOW, this 9th day of August, 2002, upon consideration of Brooks-McCollum's pro se "appeal of all recorded orders & pending orders in bankruptcy action 00-31544DWS & determinability of fraud" (docket entry # 1), which we will construe as a motion for leave to appeal, and the Court finding that:

(a) "A motion for leave to appeal under 28 U.S.C. § 158(a) shall contain: (1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating thereto," Fed. R. Bankr. P. 8003(a);

(b) Here, Brooks-McCollum timely filed a notice of appeal, but she did not clearly state which specific judgments, orders, or decrees she seeks leave to appeal, and she did not attach copies of those judgments, orders, or decrees as required by Fed.. R. Bankr. P. 8003;[1]

(c) "An appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal," Fed. R. Bankr. P. 8001(a); and

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[1] Brooks-McCollum's revised notice of appeal states that she is appealing orders in case number 00-31544(DWS), Adversary Complaint 02-397, and Adversary Complaint 02-582. We note, however, that under Fed. R. Bankr. P. 8002(a), an appeal is timely only when the notice of appeal is filed within 10 days of the date of the entry of the judgment, order, or decree appealed from, and that pursuant to 28 U.S.C. § 158(a), we only have jurisdiction to hear appeals from final judgments, orders, and decrees or, with leave of court, from interlocutory orders and decrees.

(d) Because we can not evaluate the merits of Brooks-McCollum's motion for leave to appeal without knowing

specifically which decisions she is appealing or having copies of those decisions to review, we direct Brooks-McCollum to file a list of the judgments she seeks leave to appeal and copies of the documents required under the bankruptcy rules;

It is hereby ORDERED that Brooks-McCollum shall by August 30, 2002 file a specific list of orders she seeks leave to appeal as well as copies of those orders or this action will be dismissed.

/s/ Stewart Dalzell,

BY THE COURT:

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	Chapter 7
LARRY BUTLER and DEBRA BUTLER, Debtors.	Bankruptcy No. 00-31544 DWS
CATHY D. BROOKS-MCCOLLUM, Plaintiff,	Adversary No. 02-0397
v.	
WAYNE BERRY ESQ, ZACHARY PERLICK, ESQ., LARRY BUTLER, DEBRA BUTLER, BERRY & PERLICK, Defendants.	

ORDER

AND NOW, this 3rd day of May 2002, upon consideration of the Motion of the Defendants Wayne Berry, Zachary Perlick, Larry Butler, Debra Butler, Berry & Perlick ("Defendants")[1] to dismiss the Complaint (the "Adversary Complaint") filed by McCollum asserting various state and federal laws as well as violations of the Code of Professional Conduct (the "Motion")[2];

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[1]Wayne Berry, Zachary Perlick and Berry & Perlick(the "Attorney Defendants) have represented Debra and Larry Butler ("Debtors") in their bankruptcy case and in state court proceedings involving the plaintiff Cathy D. Brooks-McCollum ("McCollum") who has acted as her own attorney.

[2] Fed.R.Civ.P. 12(b)(6), applicable here pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure ("Fed.R.Bankr.P.") for failing to state claims for which relief can be granted. The Third Circuit Court of Appeals has

And the Court finding that none of the alleged statutory violations set forth a claim for which relief exists in this Court because they are either (1) clearly inapplicable to the factual grounds

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stated that in considering a Fed.R.Civ.P. 12(b)(6) motion to dismiss, a court must accept all allegations in the complaint, and all reasonable inferences that can be drawn therefrom, as true and view them in the light most favorable to the non-moving party. See Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3rd Cir. 1989) (citations omitted); Angelastro v. Prudential-Bache Securities, Inc., 764 F.2d 939, 944 (3rd Cir.), cert. denied, 474 U.S. 935 (1985). A complaint must not be dismissed for failing to state a claim unless it appears beyond reasonable doubt that plaintiffs can prove no set of facts in support of their claim that would entitle them to relief. See City of Philadelphia v. Lead Industries Ass'n, Inc., 994 F.2d 112, 118 (3rd Cir. 1993) (citing Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957)).

she alleges;[3] (2) beyond the jurisdictional grant of this Court;[4] or impermissible attacks on the final Order of discharge in this case;[5]

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[3] McCollum cites 42 Pa. §1841 (lien priority statute and there is no lien priority dispute); and U.C.C. Article 9-107, 9-203, and 9-306 (there is no secured transaction governed by Article 9 at issue). The Court recognizes that one issue has survived this bankruptcy case, i.e., whether the mortgage lien that she alleges to hold against the Debtors' real property is valid. Since only debts are discharged in bankruptcy, the lien, if valid, would survive as an encumbrance against the Debtors' real property and an in rem action is permitted. I advised McCollum of this fact when she brought an untimely objection to the Debtors' discharge and exemptions in March 2001. (Her Motion was denied on March 27, 2001 by order which is long final.) I directed her to the state court for an adjudication of her lien right as this Court no longer had jurisdiction over the bankruptcy case which was closed. One year later, the Debtors' filed a motion to reopen the bankruptcy case contending that McCollum was doing more than enforcing her lien and seeking to file an adversary proceeding for violation of the discharge injunction. The Motion was granted, and the case was reopened for that limited purpose.

[4] She cites eight different provisions of title 18 of the United States Code relating violations of the federal criminal statute which are not enforceable in this Court of limited jurisdiction. She also complains of various disciplinary rule violations that flow from the same conduct, i.e., the attorneys filing papers in this court and the state court that, in her view, fraudulently mischaracterize the nature of the Debtors' obligation to her. While violations of the Rules of Professional Conduct may give rise to a complaint with the Pennsylvania Disciplinary Board, they do not give rise to a private cause of action against an attorney as the Rules themselves make clear. See Pa. Rules of Professional Conduct: Scope ("Violation of a Rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached"); Maritrans GP, Inc. v. Pepper, Hamilton and Scheetz, 602 A.2d 1277 (1992)(neither the Rules, nor the Code of Professional Responsibility previously in effect, per se create a legal cause of action in clients or other private parties for a violation thereof).

[5] She cites five different provisions of the Bankruptcy Code, two of which (§ § 1228, 1328) relate to chapters of the Code which were not used by these Debtors. Section 362 is no longer operative as the case has been closed, 11 U.S.C. § 362(c)(2), and sections 523 and 727 relate to discharge and dischargeability, issues that are no longer reviewable given the final order of discharge entered in January 2001. This Complaint seeks to attack both the final order of discharge, Doc. No. 17) and the final order denying her objection to discharge as untimely. See Doc. Nos. 23. She posits that Fed.R.Civ.P. 60 and 61 provide a basis to set aside the discharge order at this date. I respectfully disagree. The Bankruptcy Code sets a firm bar date for filing objections to discharge. See Fed.R.Bankr.P. 4004, 9006(b)(3). This is in keeping with the legislative policy of repose and the debtor's fresh start. McCollum did not file a timely complaint to discharge or seek an extension to the time for filing such a complaint. A hearing was held and an order was entered denying the objection as untimely. The order was not appealed. McCollum argues that her objection to discharge is still pending

as there was no order to appeal because no separate piece of paper was created denying her Motion. Rather it appears that a bench order was entered in her presence, noted on the minute sheet and entered on the docket. Had she submitted a proposed Order as the Rules require it would have been signed to accompany the ruling but its absence did not alter the fact that 2001) (oral ruling by district court judged possessed judicial force and effect and was an appealable order of the court); In re Rebeor, 89 B.R. 314 (Bankr.N.D.N.Y.1988) (oral ruling ruling converting case effective when entered on docket by clerk).

The Code provides limited relief from a discharge order. Section 727(e) states that a creditor may request revocation of the discharge under § 727(d)(1) (discharge obtained through fraud of the debtor and the requesting party did not know of such fraud) or § 727(d)(2) or (d)(3) (debtor acquired property of the estate and fraudulently failed to disclose or deliver to the trustee or committed a § 523(a)(6) act) within one year after the discharge is granted. McCollum argues that the Debtors (and their attorneys) have acted fraudulently. Had she been aware of § 727(e) she would no doubt rely on § 727(e)(1), § 727(e)(2) being clearly inapplicable. The argument fails first because it is untimely since the Complaint was filed 14 months after the discharge order was entered. Nor does Rule 60(b) help her, for that Rule is made applicable to cases under the Code by Fed.R.Bankr.P. 9024, except that "a complaint to revoke a discharge in a chapter 7 liquidation case maybe filed only within the time allowed by § 727(e) of the Code." The drafters' expressed intent was that Rule 60(b) not be used to circumvent the express time limits of § 727(e). Hiersche v. Brassard (In re Brassard), 162 B.R. 375, 380 n. 12 (Bankr. D. Me. 1994). More significantly, the fraud warranting revocation of discharge under § 727(d)(1) means fraud perpetrated in obtaining the discharge, not fraud that would warrant holding the specific debt nondischargeable. Id. at 380 n. 13. McCollum's claim of fraud goes to the circumstances surrounding the grant of the mortgage and the treatment of her claim in the bankruptcy case as a personal loan, not a mortgage loan. As such, it is a quintessential § 523(a)(2) dispute, not one under § 727(d)(1). Id.

The Code provides limited relief from a discharge order. Section 727(e) states that a creditor may request revocation of the discharge under § 727(d)(1) (discharge obtained through fraud of the debtor and the requesting party did not know of such fraud) or § 727(d)(2) or (d)(3) (debtor acquired property of the estate and fraudulently failed to disclose or deliver to the trustee or committed a § 523(a)(6) act) within one year after the discharge is granted. McCollum argues that the Debtors (and their attorneys) have acted fraudulently. Had she been aware of § 727(e) she would no doubt rely on § 727(e)(1), § 727(e)(2) being clearly inapplicable. The argument fails first because it is untimely since the Complaint was filed 14 months after the discharge order was entered. Nor does Rule 60(b) help her, for that Rule is made applicable to cases under the Code by Fed.R.Bankr.P. 9024, except that "a complaint to revoke a discharge in a chapter 7 liquidation case maybe filed only within the time allowed by § 727(e) of the Code." The drafters' expressed intent was that Rule 60(b) not be used to circumvent the express time limits of § 727(e). Hiersche v. Brassard (In re Brassard), 162 B.R. 375, 380 n. 12 (Bankr. D. Me. 1994). More significantly, the fraud warranting revocation of discharge under § 727(d)(1) means fraud

And the Court being advised that McCollum has filed a complaint in the state court seeking an adjudication regarding her lien rights ("Mortgage Complaint") consistent with the colloquy at the hearing in this Court in March 2001;[6]

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perpetrated in obtaining the discharge, not fraud that would warrant holding the specific debt nondischargeable. Id. at 380 n. 13. McCollum's claim of fraud goes to the circumstances surrounding the grant of the mortgage and the treatment of her claim in the bankruptcy case as a personal loan, not a mortgage loan. As such, it is a quintessential § 523(a)(2) dispute, not one under § 727(d)(1). Id.

Finally, Fed.R.Civ.P. 61, cited by McCollom, is incorporated by Fed.R.Bankr.P. 9005 and provides that "no error or defect in any ruling or order or in anything done or omitted by the court" is ground for disturbing an order "unless refusal to take such action appears to the court inconsistent with substantial justice." The harmless error rule has been invoked in the bankruptcy context where procedural irregularities, ... would not have had an effect on the outcome of the case. Hart Environmental Management Corp. v. Sanshoe Worldwide Corp.(In re Sanshoe Worldwide Corp.), 993 F.2d 300, 305 (2d Cir.1993). However, like Rule 60(b) — or any procedural rule for that matter — it may not be used to work a revocation of discharge outside the statutory requirements of § 727(e). In re Gray, 156 B.R. 707, 712 (Bankr. D. Me. 1993). See also Fesq v. Branchburg Plaza Assoc. (In re Fesq), 153 F.3d 113 (3d Cir. 1998) (noting that 28 U.S.C. § 2075 prohibits the Bankruptcy Rules from abridging, enlarging or modifying substantive rights defined by the Bankruptcy Code).

The preceding analysis relates only to a new attack on the Debtors' discharge. It does not relate to any claims McCollum may have asserted against the Attorney Defendants whQ o &Wily., have not b ` raged. These claims do not arise under the Bankruptcy Code and do not impact on e Debtors or their estate. Accordingly, this Court has no subject matter jurisdiction over them. Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984).

[6] The adjudication of that matter, if confined to the determination of her lien rights, does not violate any provision of the Bankruptcy Code. The Attorney Defendants admit that they filed a suggestion of bankruptcy with the state court causing this matter to be put in suspense. This filing was improper. The reopening of the case to hear the violation of the discharge injunction complaint did not stay the state court Mortgage Complaint. Indeed the adjudication of that matter may be the only way to put this dispute to rest finally. I am not persuaded by the Attorney Defendants argument that the suggestion of bankruptcy was necessary because McCollum filed a second lawsuit (including claims against them) alleging fraud and sought to have it consolidated with the Mortgage Complaint. The appropriate response would have been to object to consolidation which they did not. Instead, they filed a suggestion of bankruptcy when the bankruptcy case had been reopened for a limited purpose. While McCollum appears to have crossed the line with her

And McCollum advising the Court that she returned to this jurisdiction when the state court stayed her Mortgage Complaint;

And as there are no causes of action set forth in the Complaint as to which this Court would have any continuing subject matter jurisdiction;

It is hereby ORDERED that the Motion is GRANTED.[7]

/s/ DIANE WEISS SIGMUND
United States Bankruptcy Judge

cc: Honorable Matthew Carafello
Honorable Allan Tereshko

Courtesy copies from Chambers mailed to:

Larry & Debra Butler
6135 Cobbs Creek Parkway
Philadelphia, PA 19143

Cathy D. Brooks-McCollum
115 Emerald Ridge Drive
Bear, DE 19701

Wayne Berry, Esquire
42 South 15' Street, Suite 1000

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second suit as to Debtors, that conduct will be addressed in the pending adversary proceeding filed by Defendants here for violation of 11 U.S.C. § 524.

[7] I am forwarding a copy of this Order to Judges Matthew Carafello, whom I am advised by the Attorney Defendants, presides over the related state court matters, and Judge Allan Tereshko, whom McCollum avers entered Orders in the state court cases, so that the presiding judge will be aware that prosecution of the Mortgage Complaint is not stayed by any provision of the Bankruptcy Code, the suggestion of bankruptcy notwithstanding.

Philadelphia, PA 19102

Zachary Perlick, Esquire
42 South 15'h Street, Suite 1000
Philadelphia, PA 19102

Berry & Perlick
42 South 15'h Street, Suite 1000
Philadelphia, PA 19102

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re

LARRY BUTLER and
DEBRA BUTLER,

Debtors.

Chapter 7

Bankruptcy No. 00-31544DWS

ORDER

AND NOW, this 1st day of March 2002, upon consideration of the "Creditors' Motion for Appeal Before a Jury Panel on Order Dated February 25, 2002 to Reopen Case & Debtor's Request for Remedies for Violation of the Discharge Injunction and Stay Proceedings if Request is Denied" (the "Motion") filed by Cathy D. Brooks-McCollum ("McCollum");

And the nature of the relief sought by McCollum proceeding pro se not being clear;[1]

And the Order dated February 25, 2002 providing no substantive relief but merely reopening the bankruptcy case to allow Debtors to file an adversary proceeding against

[1] There is no such thing as an appeal before a jury panel. Moreover, the prayer for relief is not directed at the order reopening the case. It asks me to keep the proceedings closed and to allow the district attorney to proceed with charges. Nothing that this Court has done (or can do) impairs the state's rights in criminal matters. Thus, it does not appear that McCollum is appealing the February 25, 2002 order. This conclusion is supported by the absence of a notice of appeal and motion for leave to appeal (since the order is interlocutory) pursuant to Bankruptcy Rule 8001 and the appeal filing fee of $105. If the Motion is intended as an appeal to the District Court of the February 25, 2002 Order, McCollum shall takes such steps to clearly lodge that appeal within 10 days of the date of this Order.

McCollum for violation of the discharge injunction;

And until the adversary proceeding is filed, the request to stay it is premature;

It is hereby **ORDERED** that the Motion is **DENIED**.

/s/ Diane Weiss Sigmund
United States Bankruptcy Judge

Courtesy copies from
Chambers mailed to:
MOVANT (PRO SE)
Cathy D. Brooks-McCollum
115 Emerald Ridge Drive
Bear DE 19701

COUNSEL FOR DEBTORS

Zachary Perlick, Esquire
42 South 15th Street
Suite 1000
Philadelphia, PA 19102

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: LARRY & DEBRA BUTLER CHAPTER 7
Debtors Bankruptcy No. 00-31544DWS

ORDER

On February 25, 2002 the court considered the Debtors' Motion to Reopen Case. After considering the motion, the court:

GRANTS Debtors' Motion and ORDERS that Bankruptcy Case No. 00-31544 is reopened to allow Debtors proceed with their Contempt Complaint.

/s/Diane Sigmund

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Re: Larry Butler &Debra Butler
(Debtor),

Cathy D. Brooks-McCollum — Case No. 00-3154(DWS)
(Creditor) — Chapter 7

v.

Larry Butler & Debra Butler &
Law Offices Of Berry & Perlick &
Zachary Perlick & Wayne Berry
Defendants
(Debtor & Counsel). — JURY TRIAL

NOTICE OF APPEAL

Cathy D. Brooks-McCollum hereby notifies this court of its Notice to Appeal to the United States District Court of ORDER of Objection To Discharge ruled upon in March of 2001, Letter stating objection to Discharge not ruled upon and requested to docketed and ruled upon in current Answer To Debtors Adversary Complaint Number 02-582, Explanations not ruled upon and requested to be ruled upon and docketed in current Answer To Debtors Adversary Complaint Number 02-582. Creditor also gives notice that she is Appealing the Order dated May 3, 2002, and the pending Adversary Complaint filed by Debtors and any ruling should be forwarded to the United States District Court. Creditor also informs that this leave is being requested on any ORDER issued after such LEAVE and NOTICE is requested on Debtors Adversary Complaint and any other filings made by Debtor.

BY: /s/ Cathy D. Brooks-McCollum

DATED: May 8, 2002

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Re: Larry Butler &Debra Butler
(Debtor),
Cathy D. Brooks-McCollum — Case No. 00-3154(DWS)
(Creditor) — Chapter 7
v.
Larry Butler & Debra Butler &
Law Offices Of Berry & Perlick &
Zachary Perlick & Wayne Berry
Defendants
(Debtor & Counsel). — JURY TRIAL

DESIGNATION

Cathy D. Brooks-McCollum Creditor, hereby requests that this court send all documents filed during Debtors Bankruptcy proceeding prior to Discharge, of which none of the items were ever sent to Creditor (thus costs should not be assigned), which should exclude the Matrix, the Foreclosure Complaint, The Proof Of Claim all of which Debtor will supply. Debtor will supply and also requests that her Adversary Complaint, all Exhibits attached to Adversary Complaint Number 02-397, her Answer to Creditors Motion To Dismiss and all Exhibits attached, Debtors Motion To Dismiss, Debtors exhibits attached to their Motion To Dismiss, Creditors Adversary Complaint Number 02-582, Debtors Answer and attachments to her Answer to Adversary Complaint Number 02-582, Objection To Discharge, Letters sent to Bankruptcy Court in February, of 2001. All of these documents, except those of which Debtor was not supplied will be sent to the Bankruptcy Court to forward to District Court on May 9, 2002.

BY: /s/ Cathy D. Brooks-McCollum

DATED: May 8, 2002

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Re: Larry Butler &Debra Butler
(Debtor),

Cathy D. Brooks-McCollum — Case No. 00-3154(DWS)
(Creditor) — Chapter 7

v.

Larry Butler & Debra Butler &
Law Offices Of Berry & Perlick &
Zachary Perlick & Wayne Berry
Defendants
(Debtor & Counsel). — JURY TRIAL

LEAVE TO APPEAL

Cathy D. Brooks-McCollum hereby notifies this court of its Notice to Leave Interlocutory Appeals to the United States District Court of ORDER of Objection to Discharge, Letter stating objection to Discharge not ruled upon and requested to be ruled upon and docketed in current Answer to Plaintiffs Adversary, Explanations objection to Discharge and not ruled upon and requested to be ruled upon and docketed in current Answer To Plaintiffs Adversary Complaint Number 02-397. Plaintiff also informs that this leave is being requested on the ORDER issued surrounding Creditors Adversary Complaint and on whatever ORDER is issued after such LEAVE is requested on Debtors Adversary Complaint and any other filings made by Debtor.

BY: /s/ Cathy D. Brooks-McCollum

DATED: May 6, 2002

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Re: Cathy D. Brooks-McCollum	Case No. 00-3154(DWS)
Plaintiff (Creditor),	Chapter 7
v.	Adv. Proc. No.
Larry Butler & Debra Butler & Law Offices Of Berry & Perlick & Zachary Perlick & Wayne Berry	
Defendants (Debtor & Counsel).	JURY TRIAL DEMANDED PURSUANT BANKRUPTCY RULE 9015-1

COMPLAINT
NATURE OF ACTIONS

1. On July 18, 2000 Cathy D. Brooks-McCollum, Barry Kassel, Attorney for Cathy D. Brooks-McCollum, Larry Butler, and Wayne Perry appeared in court proceedings regarding late payments on a Mortgage between Larry Butler & Debra Butler. During this time it was discovered that the Second Mortgage which was to be executed on behalf of Cathy D. Brooks-McCollum and Larry & Debra Butler had not been filed, nor delivered to Cathy D. Brooks-McCollum. During this time Barry Kassel requested from Wayne Perry that Larry & Debra Butler provide Cathy D. Brooks-McCollum with the Mortgage Document of which she was to receive. Mr. Wayne Berry at this time informed Barry Kassel that his clients were not going to supply Cathy D. Brooks-McCollum with anything.

2. In August of 2000 Foreclosure proceedings began against Larry & Debra Butler.

3. Immediately after Foreclosure proceedings began against Larry & Debra Butler Zachary Perlick and Wayne Berry of Berry & Perlick proceeded to advise their clients to file for Bankruptcy. On September 14, 2000 the law offices of Berry & Perlick filed in the United States Bankruptcy Court for the Eastern District of Pennsylvania Bankruptcy proceedings on behalf of Larry & Debra Butler. At this time (September 14, 2000) is when the law offices of Berry & Perlick began their Fraud along with the Fraud began on August 14, 1998 by both Larry & Debra Butler.

The Plaintiff

4. In the proceedings filed with the Bankruptcy Court on September 14, 2000, the law offices filed their petition in Bankruptcy Court listing the Debt held with Cathy D. Brooks-McCollum as a Personal Loan (Exhibit A). All documents will show that Cathy D. Brooks-McCollum never intended, nor had a personal loan with Larry & Debra Butler. Documents will also show that Larry & Debra Butler (Defendants) knew they had a Mortgage and an Agreement to supply a Mortgage. Zachary Perlick and Wayne Berry both were informed that Teresa Carlin of Carlin Abstract did file the Mortgage Document and supplied a copy to counsel for Cathy D. Brooks-McCollum. However, after being informed that Mortgage filings occurred on August 2, 2000 (prior to Bankruptcy Filing) these parties continued to file the Bankruptcy Court as a Personal Loan and ignored all notification and made filings on what they claim to be true, not what was actually true, although the Philadelphia Department of Records shows a valid mortgage recorded.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to, US Title 18, § 157, 142, 156, 1621, US Title 11 §727, 1228, 1328, 362,**523**.

6. The Claims asserted herein arise under , US Title 18, §157, 142, 156, 1621, US Title 11 §727, 1228, 1328, 362,**523**

7. Venue is proper in this District pursuant to U.C.C. Article 9-107, U.C.C. Article 9-203, 3, U.C.C. Article 9 -306, US Title 18, §157, 142, 156, 1621, US Title 11 §727, 1228, 1328, 362,**523**. Berry& Perlick's (Counsel For Defendants) offices are located in this District, Berry & Perlick transact substantial business

here, and many of the acts and transactions constituting the violations of law alleged herein, including the preparation of the Bankruptcy Claim, preparation, issuance, dissemination of materially false and misleading statements, occurred in Bankruptcy Court and the Court Of Common Pleas, which both appear in this district.

8. In connection with the acts, conduct and other wrongs alleged herein, defendants and their counsel, directly and indirectly, used the means and instrumentality's and interstate commerce, including the United States Mails and interstate telephone communications, as well as the US Bankruptcy Courts and other courts.

THE PARTIES

9. Plaintiff Cathy D. Brooks-McCollum sold Real Estate To Larry Butler and Debra Butler on August 14, 1998 for exchange for payment on a Mortgage and Note.

The Defendants

10. Defendants Zachary Perlick and Wayne Berry advised Defendants Larry Butler and Debra Butler to file their Complaint in the US Bankruptcy Court as a Personal Loan, when they all knew that a Mortgage was on file with the City Of Philadelphia Recorder Of Records. Defendants Larry Butler and Debra Butler continue to file and make fraudulent statements in the Court Of Common Pleas and in the US Bankruptcy Court, in addition to continuing to file fraudulent claims in The US Bankruptcy Court. Defendants Zachary Perlick and Wayne Berry continue to file fraudulent claims in compliance with the fraudulent filing of Bankruptcy proceedings stating the claim held with their clients as a Personal Loan.

11. a. As Attorney's for Defendants Larry Butler and Debra Butler, Zachary Perlick and Wayne Berry had a duty to disseminate accurate and truthful information and to properly correct any public statements or documents of record, which had become materially, false and misleading. However both these parties failed to do this and are in violation of PA Rules of Professional Conduct, Rule 3.4 and 8.4, and various other laws.

b. Because of both Zachary Perlick and Wayne Berry's position and control of these filings, they exercised their power and

authority to cause the offices of Berry & Perlick and Larry Butler and Debra Butler to engage in the wrongful acts complained herein.

12. Defendants Larry Butler and Debra Butler started their fraudulent practices at the time of closing on the residence located at 6135 Cobbs Creek Parkway by executing a Mortgage which was not the wishes or intentions of Plaintiff, and continue such practices in Bankruptcy Proceedings and continue such in the Court Of Common Pleas filings, although advised that they were violating several laws.

PLAINTIFF'S ALLEGATIONS

13. Plaintiff brings this action pursuant to PA Title 42, §8141, U.C.C. Article 9-107, U.C.C. Article 9-203, 3, U.C.C. Article 9 -306, US Title 18, §157, 142, 156, 1621, US Title 11 §727, 1228, 1328, 362,523, Rules Of Professional Conduct, Rule 3.4 and 8.4.

14. Common questions of law and fact exist as to all members of this action over any questions affecting Plaintiff. Among the questions of law and fact Common to this action are:

1. whether Defendants and any other violated the mentioned PA Laws.

2. whether mentioned US laws were violated by Defendants and any other.

3. whether the Defendants issued/filed false and misleading statements in the US Bankruptcy Court and the Court Of Common Pleas.

4. whether the defendants continue to file pleadings in violation of the laws mentioned.

5. whether defendants acted knowingly and recklessly in issuing false and/or misleading statements.

6. whether Plaintiff has sustained damages and if so, what is the proper measure of damages.

7. whether defendant's case should be reopened to collect damages on a discharge of a non-existent personal loan.

8. whether case should be reopened in order for Plaintiff to collect damages.

9. whether Plaintiffs Objection For Discharge should have been treated as a complaint to the issue of dischargability

10. whether Defendants should be charged with Criminal Intent.

15. Plaintiff will rely, in part, upon the presumption of reliance established the fraud on the market doctrine in that:

1. defendants made public misrepresentations or failed to disclose material facts during these actions.

2. The omissions and misrepresentations were material.

BACKGROUND

16. On July 18, 2000 Cathy D. Brooks-McCollum, Barry Kassel, Attorney for Cathy D. Brooks-McCollum, Larry Butler, and Wayne Perry appeared in court proceedings regarding late payments on a Mortgage between Larry Butler & Debra Butler. During this time it was discovered that the Second Mortgage which was to be executed on behalf of Cathy D. Brooks-McCollum and Larry & Debra Butler had not been filed, nor delivered to Cathy D. Brooks-McCollum. During this time Barry Kassel requested from Wayne Perry that Larry & Debra Butler provide Cathy D. Brooks-McCollum with the Mortgage Document of which she was to receive. Mr.

Wayne Berry at this time informed Barry Kassel that his clients were not going to supply Cathy D. Brooks-McCollum with anything.

17. In August of 2000 Foreclosure proceedings began against Larry & Debra Butler.

18. Immediately after Foreclosure proceedings began against Larry & Debra Butler Zachary Perlick and Wayne Berry of Berry & Perlick proceeded to advise their clients to file for Bankruptcy. On September 14, 2000 the law offices of Berry & Perlick filed in the United States Bankruptcy Court for the Eastern District of Pennsylvania Bankruptcy proceedings on behalf of Larry & Debra Butler. At this time (September 14, 2000) is when the law offices of Berry & Perlick began their Fraud along with the Fraud began on August 14, 1998 by both Larry & Debra Butler.

19. In the proceedings filed with the Bankruptcy Court on September 14, 2000, the law offices filed their petition in Bankruptcy Court listing the Debt held with Cathy D. Brooks-McCollum as a Personal Loan (Exhibit A). All documents will show that Cathy D. Brooks-McCollum never intended, nor had a personal loan with Larry & Debra Butler. Zachary Perlick and Wayne Berry both were informed that Teresa Carlin of Carlin Abstract did file the Mortgage Document and supplied a copy to counsel for Cathy D. Brooks-McCollum. It was at this time when Fraud was discovered on the Mortgage Document, in that it did not reflect the wishes of Plaintiff. However, after being informed that these filings occurred on August 2, 2000 these parties continued to file the Bankruptcy Court as a Personal Loan and ignored all notification and made filings on what they claim to be true, not what was actually true, although the Philadelphia Department of Records shows a valid mortgage recorded.

20. During these pleadings Plaintiff filed an Objection to Discharge (Exhibit B) and listed the basis of such discharge. Plaintiff was not informed of Creditors meeting, and only received the initial Bankruptcy filing via counsel for Defendants , and the Discharge Notice. This Objection to Discharge was filed within the time period required by Bankruptcy Rules 4004 and 4007 and should have been treated as a Complaint (Bankruptcy No. 00-12096F Joseph A. Tomczak).

21. Defendant Zachary Perlick proceeded to try intimidating Plaintiff by sending documentation (Exhibit C) to her requesting that she send a satisfaction piece regarding the Mortgage Debt hekl-against Larry &

Debra Butler, although informed that the Mortgage Document was not discharged in Bankruptcy Court, and that Bankruptcy does not discharge any Mortgage.

22. On July 24, 2001 Mr. Zachary Perlick of Berry & Perlick filed an answer (Exhibit D) in the Court Of Common Pleas regarding Civil Action 003123 in the Court Of Common Pleas Fraud against Larry & Debra Butler

23. In Mr. Perlick having filed an answer and signed the Verification on behalf of Larry & Debra Butler and attesting Pursuant to Title 18 Pa.C.S. 4904 of the Pennsylvania Crimes Code

that all statements are true and correct to the best of his knowledge the law offices of Berry & Perlick continued their FRAUD from the Bankruptcy Court into the Court Of Common Pleas.

24. In number 3 of (Exhibit D) Mr. Perlick has verified that the signature of Larry & Debra Butler is a Fraud, although there are numerous documents to support that a Mortgage was to be had, and Larry & Debra Butler did sign all other documents on the day of Closing.

25. In number 3 of Exhibit D Mr. Perlick has verified that Larry & Debra Butler ever had an agreement to provide Cathy D. Brooks-McCollum with a Mortgage. In Exhibit E (Note) you will see that this is an agreement to provide Plaintiff with a Mortgage, you will also see in Exhibit F (HUD-1) form that this is an agreement to provide Plaintiff with a Mortgage. You will also see in Exhibit G that Larry & Debra Butler acknowledge on this cancelled check that they were paying their Second Mortgage (Not Personal Loan) as indicated by Mr. Perlick. Larry & Debra Butler have indicated on all checks written to Cathy D. Brooks-McCollum and checks presented during late fee hearings, that they were paying a second mortgage, of which they have failed to provide pursuant subpoena for discovery purposes.

26. Again, in Number 4 (Exhibit D) Zachary Perlick is attesting to that Plaintiff holds a Mortgage, although Exhibit H filed with the Philadelphia Recorder of Deeds shows that a Mortgage is on file with this office.

27. Exhibit I (Title-Searches) and Exhibit K (From Abstract Company) shows that a valid mortgage exists. The law offices of Berry & Perlick have failed to contest said Mortgage, in addition to advising their clients to submit a claim with their Title Company if they indeed do believe that the Mortgage is not valid in that Title Insurance protects one from such accusations. However, should the law offices of Berry & Perlick advise

their clients to do this, they will then be advising their clients to commit insurance Fraud. Thus, there is no real claim that a valid Mortgage does not exist in that the law offices of Berry & Perlick have not instructed their clients to make the correct filings if this is their belief.

28. In number 5 & 6 of (Exhibit D) Zachary Perlick states that Larry & Debra Butler did not 'give Plaintiff a Mortgage. This statement is accurate in that the law offices of Berry and Perlick advised Larry & Debra Butler NOT to provide Cathy D. Brooks-McCollum (Plaintiff) with the Mortgage Document.

29. The law offices also go on to state in number 7 of (Exhibit D) that Plaintiff filed a document purporting to be a valid Mortgage, when Plaintiff never filed any Mortgage document in that Larry & Debra Butler refused to give Plaintiff a copy and the Abstract Company would not provide a copy until at such time requested by counsel for Plaintiff, however the Company that filed all other Mortgage documents did file the Second Mortgage not Plaintiff.

30. In Number 9,11,12,13 of Exhibit D the law offices of Berry & Perlick continue to make fraudulent statements.

31. In number 15 of (Exhibit D) Zachary Perlick states that Larry and Debra Butler continued to make payments under the NOTE, when they indicate Mortgage on every check. (Exhibit G - One Check, others have not been supplied per Subpoena & Discovery)

32. In Number 24 of (Exhibit C) Zachary Perlick state defendants never agreed to pay any legal fees and courts, however they admit to signing the NOTE (Exhibit E) which states legal fees and costs are to be paid. In that the terms of the NOTE are and were the wishes of Plaintiff the law offices of Berry & Perlick have violated and caused their clients to violate several laws.

33. Defendants now continue to filing fraudulent Claims in Bankruptcy Court, trying to intimidate Plaintiff in complying with their Fraudulent behavior, and after having advised Larry & Debra Butlers to make filings in the Court Of Common Pleas, which did not go in their favor. Thus, the actions of these defendants continue to cause Plaintiff costs in addition to distress and financial harm.

MISREPRESENTATION DURING BANKRUPTCY PERIOD

34. Defendants Larry Butler and Debra Butler, and Zachary Perlick and Wayne Berry listed debt with Plaintiff in Bankruptcy proceedings as a Personal Loan.

Allan Tereshko to consolidate both cases (Attached).(Exhibit J) In the Motion To Combine Civil Action 00972 in

35. Defendants continue to state that Debtors never had an agreement to supply Plaintiff with a Mortgage, when several documents reveal this to be untrue.

36. Defendants continue to make fraudulent filings in The United States Bankruptcy Court and the Court Of Common Pleas.

37. Defendants Berry & Perlick contend that defendants Larry Butler and Debra Butler did not sign the Mortgage on file with City hall.

38. Defendants have not filed a claim with their Title Insurance Company, if the claims by them are true, in that Title Insurance protects individuals from fraudulent filings.

39. Defendants state adamantly that there is no mortgage or intentions to supply Plaintiff with a Mortgage when on each check written to Plaintiff by Defendants Larry & Debra Butler they Indicate Mortgage Payment.

CLAIM FOR RELIEF

40. Against all Defendants for violation of PA Title 42, §8141, U.C.C. Article 9-107, U.C.C. Article 9-203, 3, U.C.C. Article 9 -306, US Title 18, §157, 142, 156, 1621, US Title 11 §727, 1228, 1328, 362,**523**, Rules Of Professional Conduct, Rule 3.4 and 8.4. Defendants and their counsel are also in violation of PA Title 18, §4101, 4103, 4117, and 4110. Defendants are also in violation of Title 18 PA.C.S. 4904.

40. In Debtors Motion to reopen case, they state as a basis for re-opening their case that their Debt with Creditor was discharged. Debtors asked the court for damages, costs and attorney's fees.

41. In Civil Action 003123 in the Court Of Common Pleas Debtor is asking for Attorney fees, when there is no attorney of record. Counsel is also asking for other fees for the filing of this complaint, when in this case Debtors have made two filings, of which I believe may have been under the advice of their Counsel. Furthermore, in that both cases are consolidated there are no additional costs to be had, in that both cases request the same damages currently. Once the Stay is lifted Plaintiff intends on

Amending Fraud portion of Complaint to list for Punitive Damages for filing of fraudulent statements, instead of listing the same damages in Foreclosure case.

42. Debtors also failed to inform the court that an order was given on January 16, 2002 by Judge

the Court Of Common Pleas and 003123 in the Court Of Common Pleas this motion explicitly states in Number 4 the basis of this Civil Action, which is "to show that fraud took place on the day of the Mortgage closing, in addition to show that Defendants did sign all documents in question. In addition to this Plaintiff will show that Defendants did commit Fraud on the day of closing, by having produced and signed a Mortgage Document which was not the intentions of Plaintiff ..."

43. In that both cases are and have been combined, and both cases will be heard together no additional costs have been incurred by Debtors, and the Foreclosure case is the lead case. Creditor and any other persons are forbidden from collecting double damages on Mortgage default or for any other cause, as a result of Debtors and their Attorney's Criminal Activity, however creditor is not forbidden to collect punitive damages as a result of the Fraudulent behavior of Debtors and their attorney. Thus, the damages requested are due to the Foreclosure on the premises of 6135 Cobbs Creek Parkway Philadelphia and are so stated in the Motion to Consolidate. However, Creditor does intend to Amend Civil Action 003123 in the Court Of Common Pleas requesting that Criminal Proceedings be had and fines be paid due to criminal activity and state that the same money damages currently listed are for the Foreclosure, as was requested in the Motion to Consolidate.

44. Complaint 003123 in the Court Of Common Pleas goes on to state that each case is Dependent upon the other, in order for Foreclosure to proceed in number 5.

45. In that the contact Creditor spoke to in the District Attorney's office stated that the District Attorney's Office would rather proceed in Criminal Activity without the cases going forth in any other proceeding, Creditor has Stayed both of these consolidated cases, to proceed in criminal charges with the District Attorney's Office against both the Debtor and their counsel, for having filed

Fraudulent documents in the Bankruptcy Court, and continuing to file fraudulent documents in the Court Of Common Pleas.

46. Creditor has numerous supporting documents that Debtors knew when filing their claim with the Bankruptcy court that they had and intentions were to have a Mortgage with Creditor. At the Advice of Counsel for the Debtor they refused to supply checks, of which all state that a Mortgage was being paid, not a personal loan as listed in the Bankruptcy documents.

47. Creditor contends and has stated in her Combination of Cases the basis of the Fraud Case, in that Creditor continues to file documents in the Court Of Common Pleas violating several laws.

48. As stated before the Bankruptcy court and in Motion To Consolidate Creditor's intention are and have always been to prosecute the Foreclosure case and determine that Fraud took place, then proceed with the District Attorney's office on the criminal aspect of the case. Thus, based on the attached Consolidation Motion granted by the Court Of Common Pleas on January 16, 2002, Creditor requests an appeal to state her position and ague her case before Jain that Creditor was not given the opportunity to attend the Creditor's meeting, nor has been given the opportunity to speak regarding any issues surrounding these actions. It is an injustice for the courts or any parties to penalize a party and discharge debts of another party without giving the parties affected to defend the filings of such. The costs and Fraud, which continues, have affected Creditors family and creditors families' tuition due to the injustice done here.

Debtors and their Counsel also failed to Object To Proof Of Claim For Secured Debt filed with Bankruptcy Court (Although Proof Of Claim Not Required in Chapter 7), pursuant to Rule 3007-1. Wherefore, Plaintiff demands judgment against defendants as follows:

A. Prohibit the re-opening of Bankruptcy case based on the fraudulent actions of Defendants for them to collect on damages not sustained;

B. Determine if case should remain opened for Plaintiff to collect damages for FRAUD;

C. Determine if Defendants violated the listings in these pleadings;

D. Determine if Plaintiff listed their debt with the Bankruptcy Court incorrectly;

E. Determine if Plaintiff holds a Mortgage;

F. Determine if Defendants Larry & Debra Butler had an agreement to supply Plaintiff with a Mortgage

G. Determine if it were Plaintiffs intention to ever supply Defendants Larry & Debra Butler with a Personal Loan;

H. Determine if Defendants committed Fraud;

I. Require Defendants to pay damages sustained by Plaintiff by reason of acts and transactions alleged herein;

J. Award Plaintiff post judgement interest, as well as reasonable attorney fees, expert fees, and other costs; and

K. Award such other and further relief as the court may deem just and proper

JURY TRIAL DEMAND - **PURSUANT BANKRUPTCY**

RULE 9015-2

Plaintiff demands a trial by jury.

DATED: March 7, 2002

THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: LARRY & DEBRA BUTLER — CHAPTER 7
Debtors — Bankruptcy No. 00-31544DWS

And

Zachary Perlick, Wayne Berry & Berry & Perlick

MOTION FOR LEAVE TO APPEAL

Pursuant to Title 28 U.S.C. § 158(a) Cathy D. Brooks-McCollum request Leave to Appeal the Fraudulent actions of Wayne Berry, Zachary Perlick, Berry & Perlick, Larry Butler and Debra Butler.

1. Counsel for Debtors and Debtors continue to violate to PA Title 42, §8141, U.C.C. Article 9-107,

U.C.C. Article 9-203, 3, U.C.C. Article 9 -306, US Title 18, § 157, 142, 156, 1621, US Title 11 §727, 1228, 1328,

362,523, Rules Of Professional Conduct, Rule 3.4 and 8.4, with their continuing to file claims which are Fraudulent in this Court and The Court Of Common Pleas, which continue to cause Creditor financial hardship, as

well as burden Creditor for filings which no real claim lies.

2. Creditor cannot continue to entertain these Fraudulent practices begun by Debtor and their Counsel in this court, of which they continue and therefore request this appeal to seek damages for said charges, which fall within the jurisdiction of the United States Courts.

3. In that Counsel and Debtor has made the filing to reopen this Bankruptcy Case they have violation of all the aforementioned Titles and laws.

4. Creditor's Notice of Appeal states all the claims sought against Debtor and their counsel. In their making filings which are Criminal in nature.

WHEREFORE, Creditor files this Motion and Appeal to access damages caused to Creditor for these continued violations.

BY

/s/Cathy D. Brooks-McCollum
115 Emerald Ridge Drive
Bear, DE 19701
(302) 832-2694

DATED: March 5, 2002

PREMISES: 6135 Cobbs Creek Parkway Phila., PA

AFFIDAVIT

On the 4th day of March, 2002 A.D., before me a Notary Public for the Commonwealth of Pennsylvania, personally appeared Teresa A. Carlin, who, being duly sworn according to law, does dispose and say:

I, Teresa A. Carlin, facilitated final settlement of 6135 Cobbs Creek Parkway, Philadelphia, PA on August 14th, 1998 while in my capacity as an Agent for Stewart Title Guaranty Company operating as Carlin Abstract Company.

Larry Butler and Debra Butler, the buyers of the aforementioned premises, entered into a second mortgage with Cathy D. Brooks Williams (now known as Cathy D. Brooks-McCollum) to finalize this transaction.

The second mortgage was a valid mortgage and was witnessed by me at final settlement.

/s/ Teresa A. Carlin DATE 3/4/02

County of Montgomery
Commonwealth of Pennsylvania

On this, the 4th day of March, 2002 A.D., before me the undersigned officer, personally appeared 'I ERESA A. CARLIN, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledge that she executed the same for purposes herein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.
/s/ Russell Curtis
NOTARY PUBLIC
NOTARIAL SEAL
RUSSELL CURTIS, NOTARY PUBLIC
JENKINTOWN BORO, MONTGOMERY COUNTY
MY COMMISSION EXPIRES JUNE 3, 2004

Malaika D. Carter O C W E N Direct Dial: (561) 682-7323
Senior Counsel Facsimile: (561) 682-8163
Florida Authorized House Counsel mcarter@ocwen.com
Admitted in Virginia and in the District of Columbia

I hereby certify that the following documents sent to Cathy D. Brooks-McCollum are made from documents kept on file by Ocwen Federal Bank FSB in the regular course of business:

1. Mortgage secured by property located at 6135 Cobbs Creek Parkway, Philadelphia, PA 19143, executed by Larry & Debra Butler in the principal amount of $70,750.00
2. Note executed by Larry & Debra Butler in the principal amount of $70,750.00
3. Assignment of Larry & Debra Butler's Mortgage previously held with New Century Mortgage.
4. Mortgage secured by property located at 6135 Cobbs Creek Parkway, Philadelphia, PA 19143, executed by Larry & Debra Butler in the principal amount of $6,800.00

/s/Malaika D. Carter

SUBSCRIBED AND SWORN to before me this 12 day of February, 2002

/s/ Elizabeth Terrero
Notary Public for the state of Florida
My commission expires: May 26, 2002
Elizabeth Terrero
Commission # CC 745487
Expires May 26, 2002
BONDED THRU
ATLANTIC BONDING CO. INC.

Cathy D. Brooks-McCollum pro se
115 Emerald Ridge Drive
Bear, DE 19701

(302) 832-2694

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Date: MARCH 27, 2001 JUDGE'S BENCH MEMO ( )

LARRY & DEBRA BUTLER 00-31544DWS (7)

objection of Cathy D. Brooks-McCollum to Discharge & Exemptions

C/O Pro Se C/D Z. Perlick

1. Hearing held ( )
2. Hearing adjourned to ( )
3. Motion – Complaint – Objection (X)
   (Denied) / Dismissed / Withdrawn / Settled
4. Motion/Complaint settled. Stipulation to be filed by ( )
5. Motion moot. Case dismissed/discharged on ( )
6. Motion / Objection Dismissed for lack of prosecution ( )
7. Certification of no answer/objection to be filed ( )
8. Order entered ( )
9. Order to be submitted by ( )
10. Matter taken under advisement ( )
a. Stipulation of Facts by
b. Movant's brief by
c. Respondent's brief by
d. Movant's reply brief by
11. Other (to be docketed) ( )

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF	)	
	)	00-31544
LARRY AND DEBRA BUTLER,	)	
	)	Philadelphia, PA
	)	March 27, 2001
	)	
Debtors.	)	

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE DIANE W. SIGMUND
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Creditor: CATHY D. BROOKS-MC COLLUM, PRO SE
115 Emerald Ridge Drive
Bear, Delaware 19701

For the Debtors: ZACHARY PERLICK, ESQUIRE
Law Offices of Erik B. Jensen
215 South Broad Street
Seventh Floor
Philadelphia, Pennsylvania 19107

Audio Operator: PEGGY GALLAGHER

Transcribed by: DIANA DOMAN TRANSCRIBING

P.O. Box 129
Gibbsboro, New Jersey 08026
Off: (856) 435-7172
Fax: (856) 435-7124

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

I N D E X

THE COURT:

Ruling 10

Colloquy

THE COURT: Okay. Let's take up Butler. (Pause). You are?

MS. MC COLLUM: I'm Cathy Brooks-McCollum.

THE COURT: You're who?

MS. MC COLLUM: Cathy Brooks-McCollum.

THE COURT: Okay.

MR. PERLICK: Zachary Perlick on behalf of the debtors, Your Honor.

THE COURT: Okay. All right. This is -- you haven't- - have you filed something in response to this? It's sort of- - I don't know that you ever a got a --

MR. PERLICK: I never received a --

THE COURT: You never got a notice.

MR. PERLICK: I got a notice from the Court, but I never received the objection --

THE COURT: Oh, so you've never even seen it.

MR. PERLICK: No.

THE COURT: So, it's never been served on you.

MR. PERLICK: That's correct.

MS. MC COLLUM: Your Honor, I faxed all the information. I have confirmation of the faxes of every –

THE COURT: To Mr. Perlick?

MS. MC COLLUM: Correct.

MR. PERLICK: She has faxed me thousands of pages, none of which are an objection that I can --

Colloquy

THE COURT: Well, why don't we do this, Mr. Perlick. Why don't you take a moment while we call -- we'll call Ms. Masters and find out about the other matter while you just sit -- you can have a seat. Let's call Ms. Masters and find out what the deal is here.

(Judge handles other matters)

THE COURT: Okay. Now, we'll take up the Butler matter. (Pause). Okay. You've read it now. Did you want to respond to this - -

MR. PERLICK: Yes, Your Honor.

THE COURT: -- since you didn't have it -- didn't find it, I guess. There's no response here.

MR. PERLICK: Her complaint seems to be that she didn't get any notices. She's listed on the matrix. She did receive the discharge notice, which she admits in her motion.

THE COURT: Could you speak up, Mr. Perlick?

MR. PERLICK: Yes. She was listed in the matrix, her correct address. She admits, in her motion or her objection, that she did receive the discharge notice. She's listed in the original matrix. **There were some additions later that did not involve her.** We believe she did get the initial paperwork from the court.

On top of that, her claims regarding that she has a mortgage as opposed to an unsecured debt, -

THE COURT: Uh-huh.

THE COURT: -- (MR. PERLICK: -- the history is basically this. **We think her mortgage is barred by statute.** We don't think she actually has a mortgage. '

THE COURT: Uh-huh.

MR. PERLICK: In 1998, the debtors purchased a property from her. **She took back what she believes to be a second mortgage at the time. It was never filed until August of 2000 in -- so there's about a two year delay.**

THE COURT: Uh-huh.

MR. PERLICK: There's a statute in Pennsylvania that says mortgages, --

THE COURT: Well, is --

MR. PERLICK: -- in order to be effective,

THE COURT: Do I need to even get into that issue?

MR. PERLICK: I don't see any fraud here. I don't see --

THE COURT: Well, that's not the point. There may be and there may not be. But, if she -- if -- stand up. If she has a valid mortgage, -- see, you're doing this pro se, --

MS. MC COLLUM: Uh-huh.

THE COURT: -- so let me give you a little law. Bankruptcy discharges debts. So, if you're unsecured, your debt goes away. Bankruptcy does not discharge liens. If you have a valid mortgage, this bankruptcy hasn't affected it.

MS. MC COLLUM: I do understand that, and I had --

THE COURT: So, --

MS. MC COLLUM: indicated that to them.

THE COURT: So,'-- yeah, but -=

MS. MC COLLUM: Okay.

THE COURT: -- there's really nothing for me to do, because, if you have a val -- the fact that they didn't list you as a -- **they listed you as a personal loan as opposed to a secured debt**, this is -- this case is a -- a Chapter 7 case, correct?

MR. PERLICK: Yes, Your Honor.

THE COURT: So, it's not like there's a reorganization going on that secured creditors are getting paid. They filed, they -- they're keeping their exempt property, and they got a discharge of their debt.

MS. MC COLLUM: Okay.

THE COURT: If you're unsecured, --

MS. MC COLLUM: Okay.

THE COURT: -- you know, --

MS. MC COLLUM: I understand. I'm just --

THE COURT: Okay. But, --

MS. MC COLLUM: I was making sure that --

THE COURT: -- **if you still have a mortgage** --

MS. MC COLLUM: And, I do.

THE COURT: -- **and you claim you do,**

MS. MC COLLUM: Uh-huh.

THE COURT: -- **then you go the state court and you bring an action on the mortgage.** And, they'll file their objection and say,

wait a minute, it's n0t a valid mortgage under state law, and the state court will decide that. He says, under state law, you don't have a mortgage.

MS. MC COLLUM: Okay.

THE COURT: **So, that -- that's where it's going to be established.**

MS. MC COLLUM: Okay. And, that's what Mr. Perlick -- I was telling Mr. Perlick, --

THE COURT: Uh-huh.

MS. MC COLLUM: -- that I was proceeding with foreclosure procedures. He -- he referenced the bankruptcy court, that the bankruptcy court discharged my mortgage as well.

THE COURT: Well, it doesn't discharge the mortgage.

MS. MC COLLUM: That's exactly what I told him -- his office after several letters. He tried to.intimidate me by saying that your -- that this Court discharged my mortgage,

which I knew that the Court does not discharge a mortgage. THE COURT: Well, -

MS. MC COLLUM: And, the reason why it was not filed is because I paid -- the recording fees was --

THE COURT: I don't care -- I don't care what --whether it was or it wasn't.

Colloquy

MS. MC COLLUM: Okay.

THE COURT: **If you -- if you have a valid mortgage, you can exercise your rights under it. If you don't and you're just doing something to try and collect a discharged debt**. --

MS. MC COLLUM: Uh-huh.

THE COURT: --.then they'll be back here asking me to hold you in contempt of the discharge injunction.

MS. MC COLLUM: Okay. I just have to file that in, court then.

THE COURT: So, that's -- that's -- you know, that's the issue.

MS. MC COLLUM: Okay.

THE COURT: But, there's no -- the -- because the debtor is -- doesn't -- it doesn't impact the exemptions -- has nothing to do with the exemptions and it has nothing really to -- and the objection to discharge -- this is a no asset case. So, that's not even --

MS. MC COLLUM: Okay. Well, I'll proceed --THE COURT: -- not even relevant --

MS. MC COLLUM: -- in foreclosure court.

THE COURT: -- in a no asset case.

MS. MC COLLUM: That's what I intend on doing. THE COURT: Pardon me?

MS. MC COLLUM: I will proceed in foreclosure court. THE COURT: I'm not directing you --

MS. MC COLLUM: Okay.

THE COURT: -- to do anything.

MS. MC COLLUM: No, I understand that.

THE COURT: I'm just telling you that, as far as the bankruptcy is concerned, your rights have not been prejudiced. They are what they are. If you were listed on -- you were listed as a creditor, you got notice of it.

And, even if you weren't, it doesn't matter, because this is a -- I don't -- I don't even -- this was a case in which -- it was no asset. Proofs of claim aren't even required to be filed, so, you know, it -- it just doesn't -- the discharge and the exemptions are just not your issue here. It just doesn't --

MS. MC COLLUM: No. The only reason I filed that, Your Honor, is because Mr. Perlick's office informed that your office discharged the mortgage. I found out that they listed the loan as a personal loan

THE COURT: Well, he's -- I don't know what he said to you.

MS. MC COLLUM: I have a letter saying that from his office.

THE COURT: That -- that --

MR. PERLICK: We --

MS. MC COLLUM: That it discharged my mortgage.

MR. PERLICK: I've got the discharge of mortgage,

so --

MS. MC COLLUM: I have a letter.

MR. PERLICK: She's trying to `collect an unsecured debt is what we think.

MS. MC COLLUM: No.

THE COURT: Well, if you said that, that would be consistent with your position. She's saying you didn't say that. But, you know, it doesn't really matter, other than if you were trying to intimidate her, as she contends, by sending her something that's not true. If you want to show me that, I'll look at it.

But, the bottom line is it's not true, so you may have misunderstood it. Maybe you did, maybe you didn't. But, whatever rights you have under that mortgage, they ride through this bankruptcy.

MS. MC COLLUM: Okay.

THE COURT: So,

MS. MC COLLUM: Okay.

THE COURT: So, I'm going to deny the motion, --

MS. MC COLLUM: Okay.

THE COURT: -- because it really doesn't have any basis. But, --

MS. MC COLLUM: Now, --

THE COURT: But, --

MS. MC COLLUM: -- my ex-husband was -- Sen. Williams

The Court - Ruling

was not listed as part of their claim in bankruptcy court. But, he was here to possibly see if he has a secured -- have any security --

THE COURT: First of all, if it's a no asset case, I don't even need to --

MS. MC COLLUM: Okay.

THE COURT: -- he doesn't need to be listed, because --

MS. MC COLLUM: Okay.

MR. PERLICK: Thank you, Your Honor.

THE COURT: Okay. Very good. We stand adjourned until this afternoon, I believe, 2:00.

CERTIFICATION

I, Frances L. Maristch, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

2/11/02
DATE

/s/ FRANCES L. MARISTCH

January 25, 2001

United States Bankruptcy Court Eastern District of Pennsylvania
900lMarket Street

4th Floor

Philadelphia, PA 19107

RE: Case Number 00.31544

First, I would like your offices to supply me with a list of creditors who have been discharged and exactly which notes have been discharged.

As I hold a Mortgage on the Butlers premises located at 6135 Cobbs Creek Parkway, Philadelphia, PA 19143 and to date the Butlers have failed to make any payment.

Also, I was not informed of the Creditors meeting held on October 18, 2000 so that I could be in attendance to also inform this court that the Mortgage document held on 6135 Cobbs Creek Parkway was replaced from the original Mortgage document I witnessed, in addition to the Butlers and Title Company having changed the terms. In light of this it is also my desire to bring criminal charges against the Butlers and the Title Company for fraud. Thus, can your offices please inform me as to why I was not informed of the creditors meeting so that I could present this information to you, or is this something that must only be presented during criminal proceedings to be brought against both the Butlers and Title Company?

Cathy D. Brooks-McCollum

115 Emerald Ridge Drive

Bear, DE 19701

(302) 832-2694

EXPLANATIONS

1. Never received notices sent to my address regarding bankruptcy proceedings including Creditors meeting, but not limited to.

2. Debtors listed Mortgages as Personal Loan Not as Mortgage.

3. Debtors and Counsel committed Fraud before this Court, in that they were aware of the other documents that bound them.

4. Debtors intentional omitted information for Bankruptcy proceedings.

ZACHARY PERLICK, ESQUIRE ATT. FOR DEF.
I.D. NO. 73851
42 SOUTH 15TH STREET,
10TH FLOOR
PHILADELPHIA, PA 19102
Phone (215) 569-2922
Fax (215) 569-1444

CATHY D. BROOKS-MCCOLLUM
115 Emerald Ridge Drive
Bear, DE 19701

PLAINTIFF

v.

LARRY AND DEBRA BUTLER
6135 Cobbs Creek Parkway
Philadelphia, PA 19143

COURT OF COMMON PLEAS PHILADELPHIA COUNTY
JUNE TERM, 2001 NO. 972
CIVIL DIVISION

DEFENDANT'S ANSWER TO COMPLAINT IN MORTGAGE FORECLOSURE

Defendants, Larry and Debra Butler, hereby answer Plaintiff's Complaint in foreclosure and submit the following in support thereof:

1.-2. Admitted.

3. Denied. **Defendant denies that Plaintiff holds a valid mortgage on the subject property. specifically, Defendant denies signing said mortgage, defendant denies that they ever had an agreement with plaintiff granting plaintiff a mortgage and defendant denies that said mortgage has been timely filed.**

4. Admitted in part, denied in part. Defendants admit that they are the real, fee and equitable owners of the subject premises. **Defendants deny that plaintiff holds a mortgage on the subject property.**

5. Admitted in part, denied in part. **Defendants admit to entering into a land purchase agreement with plaintiff.** -- Defendants deny that they gave plaintiff a mortgage.

23. (In Part) exist. The Bankruptcy Court did deny Plaintiff's Objection to Discharge and denied Plaintiff's Objection to Exemptions.

24. Denied. **Defendants deny that a valid mortgage exists and deny that any sum of money is due.** Defendants further deny that any money is due under the Note, as personal liability for the Note was discharged in bankruptcy_ In addition, the alleged mortgage does not have any provisions for legal tees and costs, specifically, the alleged mortgage is silent on that issue; the parties never agreed to have defendants pay legal fees and costs.

25. Denied. Defendants deny that plaintiff complied with Act 6.

26. Denied. Defendants deny that plaintiff complied with Act 91.

27. Admitted that Act 91 Notices are attached. It is denied that they are valid notices_ Defendant denies that Act 6 Notices were sent or received by Plaintiff.

WHEREFORE, the Defendant respectfully requests that the Court grant judgment for the Defendant and dismiss Plaintiff's suit with prejudice.

RESPECTFULLY SUBMITTED BY:

/s/ ZACHARY PERLICK, ESQUIRE
Attorney for Defendant

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: BUTLER, LARRY & DEBRA : CHAPTER 7

Debtor — Bankruptcy No. 00-31544

Cathy D. Brooks-McCollum — Adversary No. 02-397
Plaintiff

vi.

Wayne Berry, et al.
Defendants

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR PLAINTIFF'S FAILURE TO STATE A CLAIM

Defendants file this motion to dismiss plaintiff's suit for failure to state a claim upon which relief can he granted. As authorized by Federal Rule of Civil Procedure 12(b)(6). A. Introduction

1. Plaintiff has alleged that she sold real estate to the Butler's on August 14, 1998 and that the Butler's somehow committed fraud by first assuming the duty to draft and execute a mortgage on the seller-plaintiffs behalf and then drafting a mortgage which "did not reflect the wishes of the Plaintiff." 9, 19.

2. The Butler's deny that a valid mortgage was ever executed.

3. In any event, the debtors tiled this chapter 7 bankruptcy on September 14, 2000.

4. Debtors received a discharge on January 2. 2001.

5. Plaintiff then tiled something called an Objection to Discharge & Exemptions on March 5. 2001.

MORTGAGE

$6,800.00 14th DAY OF AUGUST 1998

PREMISES: 6135 COBBS CREFK PARKWAY / PHILA, PA

For value received, the undersigned mortgagor, jointly and severally promises to pay in lawful money of the United States of America to the order of CATHY D. BROOKS WILLIAMS, mortgagee at 115 Emerald Ridge Drive / Bear, DE / 19701, or such other place as may be designated from time to time by mortgage the sum of Six thousand Eight Hundred Dollars ($6,800.00), together with interest at the rate of eight percent (8%) per annum. until paid; said principal and interest shall be paid in 48 installments of not less than One hundred Fifty-three ($153.00) Dollars each; the first said installment shall by paid on or before the 14d' day of September, 1998, and thereafter until paid in full. Any principal and interest remaining on 9/14/02 will be due on that date, which is called the "Maturity Date".

If any of the aforementioned monthly installments are not paid by the fifteenth (15th) day after payment is due, then a late charge of 4% of any overdue payments may be charged.

/s/ Larry Butler

/s/ Debra Butler

STATE OF PENSYLVANIA

COUNTY OF PHILADELPIHA

On this l4th day of August, 1998, before me, a Notary Public for the State of Pennsylvania personally appeared Larry Butler and Debra Butler known to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to inc that they executed the same.

In witness whereof, I have hereunto set my hand and a and year first above written.

/s/ Teresa A. Carlin

Notary

Notarial Seal
Teeresa A. Carlin, Notary Public
Philadelphia, Philadelphia County
My Commission Expires Sept. 8, 2001
Member, Pennsylvania Association of Notaries

August 14, 1998

RE: 6135 Cobbs Creek Parkway

Phila, PA

Seller: Cathy D. Brooks McCollum

Buyer: Larry and Debra Butler

It is hereby said on this 14th day of August, 1998`"Cathy D. Brooks-McCollum (Seller) and Larry Butler and Debra Butler agree that Cathy D. Brooks-McCollum will hold a second mortgage on the premises located at 6135 Cobbs Creek Parkway, Philadelphia, PA 19143 in the amount of $9,548.00 (Nine Thousand Five hundred and-Forty Eight Dollars), payable over Forty Eight (48) Months in payments of $200.00 per month.

There will be no prepayment penalty assessed.

Payment is due the 1st day of each month beginning with October Nineteen Hundred and Ninety Eight, and is late after the 10th day of each month with a late payment due in the amount of $20.00.

Should the Buyers fail to meet the obligations' of this agreement and the Seller have to pursue in a court of law any court and legal fees will be paid by the Buyer.

/s/ Cathy D. Brooks-McCollum /s/ Teresa A. Carlin

/s/ (Buyer) Larry Butler Notary, Public

/s/ (Buyer) Debra Butler

Notarial Seal

Teresa A. Carlin, Notary Public

Philadelphia, Philadelphia County

My Commission Expires Sept. 8, 2001

Member, Pennsylvania Association of Notaries